

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 CASE NO. 4:20-cv-40020-DHH

4 -----x

5 GREAT LAKES INSURANCE SE,

6 Plaintiff/Counterdefendant

7 vs.

8 MARTIN ANDERSSON,

9 Defendant/Counterplaintiff

10 -----x

11
12
13 DEPOSITION OF ANDREW BALL

14 Conducted Remotely

15 Caribbean Marine Surveyors Ltd.

16 Nanny Cay

17 Tortola

18 British Virgin Islands

19 June 2, 2021

20 10:03 a.m. to 5:43 p.m.

21
22
23
24 Reporter: Laurie J. Berg, CCR, RPR, CRR, CLR, CER

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2

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1 A P P E A R A N C E S

2 (continued)

3

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1 I N D E X

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3 DEPONENT: ANDREW BALL

4 (Present via videoconference.)

5 EXAMINATION PAGE

6 (BY ATTORNEY NIEMEYER) 8

7

8 E X H I B I T S

9 NO. PAGE

10 Exhibit 16 Notice of Deposition Pursuant to
 11 Fed. R. Civ. Proc. 30 (2nd Corrected) 9

12 Exhibit 17 Résumé, Andrew Ball, Andersson_AB000387
 13 to Andersson_AB000389 10

14 Exhibit 18 Caribbean Adjusters & Marine Surveyors
 15 Ltd, Invoice #423, 1/8/2020,
 16 Andersson_AB000052 to
 17 Andersson_AB000053 200

18 Exhibit 19 E-mail Chain, Wednesday, December 18,
 19 2019 9:41:32 AM, Andersson_AB000091
 20 to Andersson_AB000093 209

21 Exhibit 20 E-mail Chain, Wednesday, 19 December,
 22 2019 14:47, and Attachment,
 23 Andersson_CF000014

24 to Andersson_CF000015 210

↑ 5

1 E X H I B I T S

2 (continued)

3 NO. PAGE

4 Exhibit 21 E-mail Chain, Friday, December 20,
5 2019 12:01:04 PM, MA000143 to
6 MA000145 215

7 Exhibit 22 E-mail, Saturday, December 21,
8 2019 8:25:04 AM, and Attachment,
9 Andersson_AB000198
10 to Andersson_AB000199 215

11 Exhibit 23 E-mail Chain, Saturday, December 21,
12 2019 11:23:43 AM, MA000143 to
13 MA000144 218

14 Exhibit 24 E-mail Chain, Monday, December 23,
15 2019 11:08:31 AM, Andersson_AB000214
16 to Andersson_AB000216 222

17 Exhibit 25 Statement as Recorded Presently,
18 23/12/19, Andersson_AB000224 to
19 Andersson_AB000225 232

20 Exhibit 26 E-mail Chain, 23 December 2019 20:05
21 and Report, Monday December 23rd,
22 2019, Andersson_CF000037 to

23 Andersson_CF000051 254

24

↑

6

1 E X H I B I T S

2 (continued)

3 NO. PAGE

4 Exhibit 26A E-mail Chain, 27 January 2020 16:35

5 and Attachment, Andersson_CF000144 to

6 Andersson_CF000148 283

7 Exhibit 27 E-mail Chain, 27 December 2019 12:21

8 and Attachment, Andersson_CF000055 to

9 Andersson_CF000057 287

10 Exhibit 28 E-mail Chain, 19 February 2020 16:34,

11 Andersson_CF000157 to

12 Andersson_CF000158 294

13

14 (Original exhibits marked electronically

15 and retained with the transcript.)

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1 P R O C E E D I N G S

2

3 MADAM COURT REPORTER: This is Laurie
4 Berg. I am a Registered Professional Reporter and a
5 Certified Realtime Reporter with the National Court
6 Reporters Association, a Certified eDepoze Reporter,
7 as well as a Certified Court Reporter with the State
8 of New Hampshire. I am a Notary Public in the State
9 of New Hampshire and the Commonwealth of
10 Massachusetts.

11 The attorneys participating in this
12 proceeding acknowledge that I am not physically
13 present in the proceeding room, nor am I physically
14 present with the witness, and that I will be reporting
15 this proceeding remotely via videoconference.

16 They further acknowledge that, in lieu of an
17 oath administered in person, the witness will verbally
18 declare his testimony in this matter under the penalty
19 of perjury.

20 The parties and their counsel consent to this
21 arrangement and waive any objections to this manner of

22 reporting the proceeding.

23 Will the attorneys now please indicate your
24 agreement by stating your name and your agreement on

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8

1 the record, after which I will swear in the witness
2 and we may begin.

3 MR. GOLDMAN: My name is Michael Goldman,
4 I'm counsel for the plaintiff, Great Lakes Insurance
5 SE, and we agree.

6 MS. NIEMEYER: Hi. Michelle Niemeyer,
7 counsel for Defendant Martin Andersson and we also
8 agree.

9 (Off the record at 10:05 a.m.)

10 (Discussion off the record.)

11 (Back on the record at 10:05 a.m.)

12 (Deponent sworn.)

13 MADAM COURT REPORTER: Thank you very
14 much. You may begin.

15

16 ANDREW BALL

17

18 having been satisfactorily identified and
19 duly sworn remotely by the Notary Public, was examined
20 and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. NIEMEYER:

23 Q. Hi, Mr. Ball. For the record, I'm Michelle
24 Niemeyer. I represent Mr. Martin Andersson in this

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9

1 matter.

2 And the first question I have for you is --
3 I'm going to just put up a document for you. Okay.
4 Let's see. Sorry. I have to get into the share
5 screen mode here.

6 (Pause.)

7 MS. NIEMEYER: This document will be
8 marked as Exhibit 16. It's the notice of deposition
9 for today.

10 (Exhibit 16 marked for identification.)

11 BY MS. NIEMEYER:

12 Q. Mr. Ball, I'm just going to ask if you could
13 take a peek at this document and let me know whether
14 you've seen that and whether that's the notice
15 pursuant to which you're here today?

16 A. (Deponent viewing exhibit.) It is, indeed.

17 Q. Okay.

18 A. And I have seen it.

19 Q. That's all I need to ask on that one.

20 Is Mr. Goldman acting as your attorney

21 representing you here today?

22 A. No, he's not.

23 Q. Okay. Thank you.

24 All right. And the second thing I want to go

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10

1 to is a résumé of yours, which was shared with us in

2 discovery. Let me just grab that real quick.

3 (Pause.)

4 MS. NIEMEYER: Okay. And, Laurie, I'm

5 going to ask that you mark this as Exhibit 17.

6 (Exhibit 17 marked for identification.)

7 MADAM COURT REPORTER: It's all set,

8 ma'am. It's all marked.

9 BY MS. NIEMEYER:

10 Q. Okay. So, Mr. Ball, I'm looking at a résumé

11 which has the Bates number AB000387, and I believe

12 it's three pages, so it goes through 389.

13 And my first question to you is just whether

14 this is actually your résumé?

15 A. (Deponent viewing exhibit.) It is my résumé,

16 yes.

17 Q. Is this a current version of your résumé?

18 A. (Deponent viewing exhibit.) I do not believe

19 it is, at this point. It's been updated a few times

20 over the COVID era, but it was up to date at the time

21 of loss, yes.

22 Q. Okay. Now, have you had anything change,
23 that's significant, that you'd like me to know about
24 since this résumé came out?

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11

1 A. I don't think so, no.

2 Q. Okay. I want to just go through a little bit
3 of your history, and since it's a little easier to go
4 from back to front, I'm -- I'm going to kind of start
5 at the back of this so that we can have an idea of
6 what your history's been over time.

7 MR. GOLDMAN: Michelle, can I stop you
8 for one second with a procedural question --

9 MS. NIEMEYER: Yes.

10 MR. GOLDMAN: -- before you get into it?

11 Is there any way that myself or the witness
12 can scroll through the other pages of the document
13 technologically, or are we limited to looking at the
14 page that you're presenting?

15 MS. NIEMEYER: Technologically, we can --
16 I can share the share. Let me just see something
17 here. We did do this before on the last one, but,
18 actually, Tony was on the wrong kind of technology and
19 couldn't use it when we tried to do that with him.

20 MR. GOLDMAN: Okay.

21 MS. NIEMEYER: So, yeah, I can definitely
22 -- I can't allow both of you to scroll through it at
23 once, but I can give over control of the document to
24 one of you --

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12

1 MR. GOLDMAN: Okay.

2 MS. NIEMEYER: -- which -- since you're
3 not representing Mr. Ball, I'll give it to him. And
4 that should be able to work.

5 So, what we do is, we go to remote control
6 and then we go to Andrew Ball, and I just did that.

7 MR. GOLDMAN: Michelle, I'm not sure --

8 MS. NIEMEYER: Now, Andrew, you are now
9 the only --

10 MR. GOLDMAN: -- if it's relevant that
11 I'm not representing him. I'm entitled to look at the
12 exhibits as well. I don't see --

13 MS. NIEMEYER: Of course you are.

14 MR. GOLDMAN: -- a particular issue in
15 this instant. Oh, okay, fine, just as long --

16 MS. NIEMEYER: It's --

17 MR. GOLDMAN: -- as we're clear on that.

18 MS. NIEMEYER: -- and -- and, Michael,
19 this document was produced by your office, so --

20 MR. GOLDMAN: I understand, yes.

21 MS. NIEMEYER: -- I can shoot you an
22 e-mail with a copy of it if you'd like. It's right
23 here in front of me.

24 MR. GOLDMAN: Not this minute. I've got

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13

1 it myself. Don't stress about it. But I just wanted
2 to make the technological issue --

3 MS. NIEMEYER: Okay.

4 MR. GOLDMAN: -- now --

5 MS. NIEMEYER: And -- and I'm trying to
6 do --

7 MR. GOLDMAN: -- in case you have an
8 issue.

9 MS. NIEMEYER: -- the best that I can,
10 but, unfortunately -- I -- I would be happy to give
11 both of you control, but I can't. It's not --

12 MR. GOLDMAN: I understand.

13 MS. NIEMEYER: -- possible.

14 BY MS. NIEMEYER:

15 Q. So, Mr. Ball, do you -- do you see a --
16 there's, like, a toggle, I think, on the far right
17 side of your screen that you can scroll through that.

18 A. (Deponent viewing exhibit.) No (laughs).

19 It's not letting -- oh, there we go. Okay.

20 Q. You're moving it. Okay, so it's working.

21 A. (Deponent viewing exhibit.) Yeah.

22 Q. Okay. So if you could go back so that I can
23 ask the questions in the order that I was going to do
24 this, could you go to the next page -- the last page

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14

1 is empty, so --

2 A. (Deponent complied.) Oh.

3 Q. -- so that middle page, that one.

4 A. (Deponent viewing exhibit.) There we go.

5 Q. Okay. Because I -- I just want to -- kinda
6 wanted to go back. The first jobs that you list are
7 these jobs as -- as a freelance captain or as a
8 captain in 2008, roughly.

9 Is that the beginning of your career in
10 working, generally, Mr. Ball, or just your marine
11 career?

12 A. My marine career.

13 Q. Okay. What -- what did you do prior to
14 working in the marine industry?

15 A. Previous to that, I was mainly in private
16 security. I was also a university student at the
17 time. I got into this when I was about 20 years old,
18 so I'm not sure I would consider it so much a career

19 as a job, previously.

20 Q. Okay.

21 A. But, you know, it's -- that's what I did
22 before I got into the marine industry.

23 Q. Okay. So -- so is it fair to say then that
24 your first -- your first real job, quote/unquote, as a

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15

1 -- an adult outside of school would've been this
2 freelance captain job in 2008, or were you in school
3 then?

4 A. No, I was out of school then.

5 Q. Okay.

6 A. So you -- you could say that my first sort of
7 post-secondary beginning of a career, yes, that would
8 be correct.

9 Q. Did you have any sort of credential at that
10 time to be a captain when you worked as a freelance
11 captain for Festiva?

12 A. Yes, I had a 200-ton masters license.

13 Q. And how did you get that license?

14 A. I attended the United Kingdom Sailing
15 Academy, and I went through their cadetship program.

16 Q. And -- and -- and when did you finish that
17 program?

18 A. That would've been earlier in 2009, I
19 believe.

20 Q. Did that program require any level of -- or
21 -- or time -- did you have to have a certain amount of
22 time at sea or any kind of internship to get that
23 program --

24 A. Yes.

↑

16

1 Q. -- credential?

2 A. That's -- that's correct. So the -- the RYA
3 Yachtmaster Program, which is commercially endorsed by
4 the MCA based on STCW certificates, medical
5 certificates, et cetera, that go with it, enables up
6 to 200 tons with up to 12 passengers. And it is based
7 on a significant amount of sea time, some of which is
8 also measured in terms of night hours, offshore
9 distances, skippered passages, specifically. Just
10 sitting on the deck won't get you there.

11 And so, along with that, in -- in that
12 program, I did my yachtmaster offshore, I did my
13 Powerboat Level II, which is also now -- at the time,
14 I don't think it was -- it could be commercially
15 endorsed, it can now, along with my STCW, which is
16 firefighting, sea survival. There's sort of an ethics
17 course that goes with it. Marine first aid. STCW is

18 what's required for every commercial mariner. It
19 doesn't matter whether you, you know, work at a shop
20 on a cruise ship, you still have to have that.

21 Q. Can you explain what that acronym means and
22 who issues that, STCW?

23 A. It's the Standards of Training and
24 Certification for Watchkeeping. When I did it, it was

↑ 17

1 based on the 1995 convention, which has since been
2 updated. There's a 2010 convention, which didn't come
3 into force, I don't think, until '11 or '12, in fact,
4 but that's through, I believe, the International
5 Maritime Organization, which is a branch of the UN.

6 Q. Okay. You mentioned something and, I'm
7 sorry, I -- I was writing and I didn't catch it.
8 You -- you mentioned that there were -- STCW was the
9 second of the acronyms you mentioned. The first one
10 had three letters.

11 What was that?

12 A. It was probably RYA or MCA.

13 Q. M -- MCA, what is that?

14 A. So I'll -- I'll go -- I'll go back a little
15 to give it some context. My -- my certificate of
16 competency, my masters license, if you will, is issued

17 by RYA, which is the Royal Yachting Association. And
18 then it is commercially endorsed by the MCA, which is
19 the Maritime Coastguard Agency. It's equivalent to
20 the British version of the US Coast Guard. However,
21 they are a -- a regulatory search and rescue body,
22 they are not a -- an endorse -- they're not a military
23 body --
24 Q. Okay.

↑ 18

1 A. -- like the US Coast Guard.
2 Q. Good to know.
3 Okay. So that -- so is it fair to just
4 generalize that as your credentials are through the
5 British government?
6 A. Correct.
7 Q. And a commercial --
8 A. And the -- the MCA -- the MCA is then
9 audited, because we're going through that here in the
10 BVI right now. The MCA is then audited by the
11 International Maritime Organization. So it falls into
12 a structure of an international framework and
13 international convention.
14 Q. Okay. So I see on your résumé that you had
15 -- you had experience in -- in December through
16 February of -- December '08 through February of '09 as

17 a captain for a san -- Festiva Sailing Vacations.

18 Was that a charter operation where you would
19 be the captain with paid charter vacationers?

20 A. Correct.

21 Q. And it says you were the captain of a 40 --
22 44-foot crewed catamaran.

23 What kind of catamaran was that?

24 A. That was a Lagoon 440 --

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1 Q. Did you have other --

2 A. -- which is sailing catamaran.

3 Q. Did you have additional crew other than
4 yourself on that boat?

5 A. I had a -- a chef, but not one that we would
6 consider as deck crew. So she wasn't responsible for
7 any of the operations of the boat. She was -- well,
8 she was responsible for the meals.

9 Q. So where -- is it fair to say that you were
10 the -- you were expected be to the only person sailing
11 that boat?

12 A. Correct.

13 Q. Okay. And then you moved on to The Moorings
14 in February of 2009; is that correct?

15 A. Correct.

16 Q. Was your job at The Moorings, essentially,
17 the same as your job at Festiva?

18 A. Correct.

19 Q. And what kind -- it says a 46-foot crewed
20 catamaran.

21 What kind of -- kind of catamaran was that
22 boat?

23 A. It was a Robertson & Caine Leopard 46, which
24 is --

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20

1 Q. Okay.

2 A. -- also a sail --

3 MADAM COURT REPORTER: I'm sorry.

4 BY MS. NIEMEYER:

5 Q. So I --

6 MADAM COURT REPORTER: Excuse me. Hold
7 on one moment. Which was a Robertson & Caine and then
8 I couldn't what you -- I think you said okay,
9 Michelle, and it cut him out. I couldn't hear the
10 rest of his sentence.

11 If you can, please repeat your answer.

12 A. A Robertson & Caine Leopard 46.

13 MADAM COURT REPORTER: Thank you.

14 BY MS. NIEMEYER:

15 Q. Again, that vessel -- the 46-foot Leopard,

16 were you the only sailing crew on that vessel being
17 the captain of the boat?

18 A. Correct.

19 Q. Where did those boats sail?

20 A. The British Virgin Islands.

21 Q. Did they stay within a fairly close range of
22 -- of the islands that you were sailing? Can you
23 explain, did you have a path you followed? What did
24 you do with those boats?

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21

1 A. So, the -- the BVI is little bit of a sailing
2 theme park, if you will. We consider it very low risk
3 here, because everything is line of sight,
4 everything's close together.

5 So, in terms of offshore passages, which is,
6 I assume, where you're going, no, we didn't go very
7 far. Probably the furthest navigational limits that
8 we would've gone on a -- on a charter with those boats
9 is probably not more than ten miles from safe haven.
10 I think the longest offshore passage was less than 20
11 miles.

12 Q. Let me ask you a question, when you were a
13 captain with The Moorings or with Festiva, were you
14 ever responsible for evaluating people who wanted to

15 bareboat charter?

16 A. No.

17 Q. Okay. Now, your next job that you list on
18 here, and it looks like there's a -- it's from October
19 2010, so, after The Moorings --

20 A. (Deponent nods head.)

21 Q. -- until December of 2014, the
22 manager/captain/engineer of Sailing Yacht Ma Ha.

23 A. Yes.

24 Q. What kind of a vessel was that?

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1 A. It was a Lagoon 570 sailing catamaran.

2 Q. And it appears as if you were the full-time
3 crew on a private vessel; is that correct?

4 A. Correct, but I -- I will -- I will preface
5 that, that in -- in my world, there's a difference
6 between private and commercial. It was privately
7 owned. It was -- it's not in the chartered fleet, per
8 se, but it was a charter vessel, so we did charter it.
9 It wasn't commercial activity.

10 Q. Okay. So you were -- you were the captain
11 who was, again, taking tourist vacationers who were
12 paying to rent that vessel on their trip?

13 A. Correct.

14 Q. Was that vessel sailed in that same area of

15 the British Virgin Islands?

16 A. No. We went a lot further with that boat.

17 So, in the summer, we would go all the way up to

18 Cape Cod. The owner had a house up there. And in

19 season here, which is -- season here is sort of

20 November through, let's say, June, when it's not

21 hurricane season. We would go -- I think we took that

22 boat as far as Antigua on charter, and we did -- we

23 did a couple charters that were sort of

24 Antigua/St. Martin/BVI, which were probably in terms

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23

1 of navigational limits.

2 Again, the Antigua/St. Martin/BVI stuff would

3 take us probably about 60 nautical miles from safe

4 haven. The -- the stuff up to -- up to Cape Cod,

5 obviously, took us almost 500 miles from save haven,

6 but we didn't have paying passengers on at that time.

7 Q. Did you ever take that vessel farther south

8 in the Caribbean or farther west?

9 A. No. I mean, Antigua is -- sorry, yeah, no,

10 we didn't go further west.

11 Q. And -- and when you say "Antigua is," what --

12 what were you about to say? You didn't finish.

13 A. I was about to say "west," and my brain's

14 going, no, that's east (laughs).

15 Q. Oh, okay. Okay. And it's northeast,
16 correct?

17 A. I would say it's a little bit southeasterly,
18 actually.

19 Q. Okay. What would you say is closest to
20 Antigua? I'm not -- I'm -- I have a picture in my
21 head, but I'm not sure exactly where it is in relation
22 to other islands.

23 A. Antigua kind of makes up the -- the top of
24 the L at the Caribbean between the Windward and the

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1 Leeward Islands. So, St. Martin -- St. Martin, Saba,
2 Nevis, St. Kitts, that's all the same area.

3 Q. Okay. So is it fair to say it's in that sort
4 of -- in that line of islands that would start with
5 the Dominican Republic and then Puerto Rico, and then
6 you go east and you end up to Antigua?

7 A. Correct. It makes pretty much the end of the
8 line before it starts going south.

9 Q. Okay. And, again, in the context of that
10 vessel the SY Ma Ha, did you ever have any opportunity
11 to evaluate the sailing skills or the ability of any
12 other person to captain or charter that vessel
13 bareboat?

14 A. Not while I was on that boat, but, during
15 that period, I did freelance for a few -- I do
16 apologize, it's not on the résumé -- I freelanced for
17 a few of the local bareboat companies, one of which
18 started out working with Ma Ha as our shoreside
19 management.

20 And they had a -- a bareboat side, and I did
21 do what we called checkout sales, which, basically --
22 when the tourists arrive, you go out, you spend the
23 first day with them. It may be their first charter or
24 the charter company may be unsure about their

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1 credentials, and you sort of evaluate their -- their
2 capability to manage the vessel safely. And at the
3 end of the day, you kind of say, all right, you're
4 either going to need a captain, or you're good to go
5 on your own.

6 Q. All right. And -- and in -- in that context
7 -- so -- so, with the Ma Ha, I guess I have one
8 question I just want to circle back to, which was, on
9 that boat, it says manager/captain/engineer.

10 Was there any other sailing crew with you on
11 that vessel?

12 A. Yes. Yes, I had a chef with me on the boat,

13 but she was also deck crew at that point.

14 Q. Did she have any sort of credential for being
15 deck crew?

16 A. She did. She had Competent Crew
17 Certification and RYA Day Skipper Certification.
18 Those are both Royal Yachting Association credentials.

19 Q. Now, when you went to -- after December of
20 2014, you worked at -- it looks like SAR Tech, Virgin
21 Islands Search and Rescue, which appears to be a
22 long-term volunteer position.

23 Is that a fair way of describing it?

24 A. (Deponent viewing exhibit.) It is correct.

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1 I'm --

2 Q. Okay.

3 A. -- (inaudible) through it here.

4 MADAM COURT REPORTER: I'm sorry, I
5 didn't hear what you just said, sir. You said
6 something --

7 A. I just said, I'm trying to --

8 MADAM COURT REPORTER: -- through it.

9 A. -- to scroll to it, but it's on the same
10 page.

11 Q. Yeah. I'm just going backwards up the page
12 instead of coming down.

13 So, in that capacity, again, was there ever
14 any -- did you have any obligation to evaluate people
15 or decide what made them capable or incapable of -- of
16 captaining a vessel?

17 A. I am -- I am one of the search-and-rescue
18 crew trainers, as well as a -- as well as a responder,
19 and I'm one of the people that signs off on people
20 actually being able to function as crew for us.

21 To put that into context, we -- we have two,
22 approximately, 35-foot rigid inflatables. They've
23 got, you know, 700 horsepower each. They're --
24 they're high-speed offshore response boats, and we do

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1 go, at times, up to 60 miles, probably, from here,
2 rain or shine.

3 We engage in helicopter operations, and we
4 have a full medical team on board, so we train our
5 medics to one level below the par -- below a
6 paramedic, and we deal with everything from diver
7 injuries to missing person searches to heart attacks
8 to allergies to, you know, a missing -- missing
9 fingers.

10 In a -- in a normal tourist season here --
11 obviously, we haven't had one of those in the last two

12 years, we would average, probably, five to seven calls
13 per week --

14 Q. Wow.

15 A. -- and it's sort of the basis of, when the
16 phone rings, if you're available, you go.

17 Q. Got it. And so you train people and -- and
18 decide who's the captain.

19 Are you involved in any other type of
20 capacity with that group?

21 A. Well, I'm also a responder myself, yes.

22 Q. Okay. I have a question about these -- I'm
23 going to call them island hopper charter vessels that
24 you worked on; the Festiva, The Moorings and Ma Ha

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1 when it was in that area in the islands.

2 What is the typical behavior of those boats?

3 Where -- where do they go? What -- what do people do
4 with the boats when they're in those areas?

5 A. I'm -- I'm not entirely sure my answer's
6 going to be what you're asking. It's somewhat of a
7 broad question. But the -- the average week, you
8 know, you wouldn't -- you wouldn't move at night, for
9 instance. You're -- you're doing short sails, and
10 it's really more about where the boat is stopped.

11 It's a hospitality business, and it's almost

12 like a floating resort. A lot of it is about diving,
13 water sports. There's obviously a sailing aspect on
14 the -- on the most part. If the -- if the weather is
15 terrible, people don't want to go out. Of course, you
16 know, that is what I trained and certified for, but
17 that's not what we're offering out here to tourists.

18 Q. They might never come back, right?

19 A. Right. Sometimes people get -- looking at
20 boats.

21 (Laughter.)

22 BY MS. NIEMEYER:

23 Q. So, let me ask you -- now, your next job
24 or -- I'm not going to say "next job," because the SAR

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1 Virgin Islands Search and Rescue seems to be -- that's
2 a consistent volunteer position that you've held and
3 you continue to hold, correct?

4 A. Correct.

5 Q. Okay. So, post-sailing Yacht Ma Ha, you left
6 in December 2014, and it appears you went to a
7 position with a company called Parts & Power Limited
8 as a service manager until February of 2016; is that
9 correct?

10 A. Correct.

11 Q. Did -- now, was that a power or a sail
12 organization?

13 A. No. It was an engineering organization. So,
14 in -- I think it was 2014 that I got married, I
15 decided I needed to be land-based for a little while
16 and be at home. So I joined a -- a local engineering
17 firm, which they handle marine propulsion, power
18 generation, air conditioning, we did a lot of
19 different things with boats.

20 But it was -- it was a -- call it a school of
21 engineering for me. I got thrown in the deep end. I
22 learned a lot in a short period of time. But I was
23 not on the water during that period, not in a
24 commercial sense. Obviously, we -- you know, I live

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1 in the BVI, we -- we go sailing on weekends here, but
2 I was not commercially on the water in that period.

3 Q. Okay. And -- and let's pop up to the next
4 page, which is the first page. All right.

5 A. (Deponent complied.) Yeah.

6 Q. So now we go to October 2018.

7 Why did you leave Parts & Power?

8 A. I got divorced, that was part of it (laughs),
9 and I -- I -- I somewhat missed the water, but I
10 really didn't like what I was doing. There wasn't a

11 lot of challenge to it, and I didn't like who I was
12 working for, to be honest. I -- I'm somewhat focused
13 on ethics in business, and I wasn't very happy with
14 the way that my employer was -- was doing things. But
15 similarly, you know, I enjoy -- I enjoy a challenge,
16 I enjoy new problems to solve, and I wasn't finding
17 them there.

18 Q. Okay. Now -- so you left there, and you --
19 it looks like, in October of 2018, you have Relief
20 Captain on Sailing Yacht Necker Belle.

21 Was that a -- a temporary position?

22 A. It was somewhat -- it is somewhat of a
23 permanent position. I, obviously, haven't been able
24 to get to the boat due to COVID concerns in over a

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1 year and a half. I'm still their relief captain, but
2 they -- they don't have a need for one, because the
3 crew's not really being tasked.

4 So the purpose of the relief captain is,
5 effectively, that when the captain needs a break or
6 the captain needs to go to a wedding or go on vacation
7 or whatever, they call up the relief captain and off
8 you go.

9 And so I've got Necker Belle on there. She's

10 actually called Bella Vita now. She's been sold. I'm
11 still -- I'm still part of the relief crew. She used
12 to belong to Sir Richard Branson. So she was based
13 here, but we also took her up as far as
14 Fort Lauderdale and Georgia.

15 Q. Well, that must have been pretty interesting
16 working with him.

17 A. I -- I still work with him.

18 Q. Excellent.

19 A. You asked me a little earlier about stuff
20 that's not on this résumé. The -- the COVID period
21 has been a little bit interesting and, if you'd like,
22 I can elaborate on that a little bit, because it may
23 give it context for you --

24 Q. Okay.

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1 A. -- to get to that point.

2 Q. We'll get there.

3 A. Okay.

4 Q. We'll get there. Remind me if I forget.

5 A. Okay.

6 Q. So -- so that Necker Belle was an
7 on-again, off-again, is that a fair way of putting it?
8 You were relief captain when you were called upon?

9 A. Correct. It's -- it's as-needed. It's not a

10 full-time deal.

11 Q. Okay. And where is that boat now?

12 A. I believe she's in St. Thomas right now. So
13 she's -- she's less than 50 miles away. I just can't
14 get to her.

15 Q. Okay. So the islands are still -- they're
16 not allowing any movement because of --

17 A. We're -- we're open --

18 Q. -- COVID?

19 A. -- we're -- we're open, but there are
20 significant restrictions to crossing the borders.
21 They don't -- it's not a very friendly process.
22 There's a lot of testing involved, there's quarantine
23 involved and a high level of expense through all of
24 that --

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1 Q. Okay.

2 A. -- as well.

3 Q. Okay. So, again, also in 2018, August of
4 2018, I see Relief Captain, Motor Yacht The
5 Collection. And can you tell me a little bit about
6 that boat? And that says "to present."

7 So is it fair to say you're -- you're
8 on-again, off-again acting as relief captain on both

9 of those vessels to date, if there were no COVID?

10 A. That actually ended in February.

11 Q. Okay.

12 A. It's been sold to a new owner, and I decided
13 not to stay. Obviously, I can't even get there, so
14 I -- I can't enter into a new agreement reasonably.

15 So The Collection is a hundred-and-three-foot
16 or hundred-and-five-foot Mangusta, which is a
17 fiberglass motor yacht. She does about 40 knots.
18 It's a bit like driving a cigarette boat, except it's
19 a hundred and five feet long. She's got somewhere
20 between three and 5,000 horsepower, so she's a big
21 girl and she goes fast.

22 She is -- she is -- you know, she's Italian
23 finished, four guest cabins on board. At any given
24 time, we'd take up to 12 passengers. However, when

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1 we're on the dock, when we're not underway, you know,
2 at some points, the owner would have up to 30 people
3 aboard for dinner parties and what have you.

4 Q. Okay. And -- and, finally, I see Marine
5 Surveyor, Caribbean Marine Surveyors, Limited,
6 February 2016 to present.

7 Are you still with them?

8 A. Correct.

9 Q. Is that your company?

10 A. I am, indeed.

11 Q. Um --

12 A. It's not my company. I'm -- I'm not a
13 partner in the company --

14 Q. Okay.

15 A. -- but it's who I work for, yeah.

16 Q. And the reason I ask is, somewhere in the
17 paperwork, it appeared there were two different
18 company names, and I wasn't sure if you were
19 subcontractor to Bill Bailey or if you were part of
20 his organization?

21 A. So we do have two different company names,
22 mainly for tax purposes. So there's Caribbean Marine
23 Surveyors, which is the entity that functions in the
24 British Virgin Islands, and we use that for work that

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1 we do in the British Virgin Islands, the taxable work.

2 And then there's Caribbean Adjusters & Marine
3 Surveyors, which is a BVI-registered company, but we
4 use it for all of our offshore work. So, anything
5 that's not in the BVI.

6 And, probably, I think it's happened since
7 this loss, we also have Caribbean Adjusters & Marine

8 Surveyors Grenada, because we have an office in
9 Grenada, which is taxable in Grenada and trading in
10 Grenada.

11 Q. Okay. So help me out again, with that second
12 entity that does the offshore, what's that called
13 again?

14 A. Caribbean Adjusters & Marine Surveyors.

15 Q. Now, this particular claim involved a vessel
16 that went aground in the Dominican Republic.

17 So was -- was that, technically, under
18 Caribbean Adjusters & Marine Surveyors?

19 A. Correct.

20 Q. Okay. Do you have any kind of a contract
21 or -- or does the company have a contract with Great
22 Lakes or with Concept, so that you have some sort of
23 arrangement with them that's more than just a one-off
24 deal?

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1 A. I -- I believe we do. We work with them
2 regularly. That's somewhat above my pay grade.

3 Q. Okay. In your experience working with this
4 company, what percentage of your work would you say is
5 on behalf of Concept or their insurance company
6 clients?

7 A. On behalf of Concept, probably less than

8 10 percent, I should think. Probably a lot less than
9 10 percent. There's a lot of -- a lot of different
10 things that we do. So we do -- we obviously do damage
11 claims, and, pre-COVID, that's what I would spend a
12 lot of my time doing.

13 Q. Mm-hmm.

14 A. I also split those out between catastrophe
15 response and normal damage claims. I've spent a lot
16 of times responding to hurricanes in disaster zones,
17 which is kind of a different type of work. It's a bit
18 like triage.

19 We obviously also do condition and valuation
20 for purchase, for people that are buying boats. We do
21 the same thing for insurance, for owners that are
22 trying to obtain coverage. We do phase-out
23 inspections for boats that have been in a -- in a
24 charter fleet and are being released from the fleet

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1 back to the owner.

2 I do coding as well. So I do commercial
3 certification of -- of vessels as -- as a certifying
4 authority for the MCA, the Maritime Coastguard Agency
5 in the UK, and a number of other flag states.

6 So the -- the -- the MCA one would cover all

7 of the Red Ensign states; so, places like BVI, Cayman,
8 Guernsey, Jersey, the UK. I've also been enabled by
9 the Marshall Islands. As an office, we also work with
10 Transport Canada and a number of other flag states and
11 entities?

12 Q. Okay. So February 16th [sic] I see is when
13 you started working there.

14 Was that your first experience as a marine
15 surveyor?

16 A. That's correct.

17 Q. And at that time had you gone to school or
18 done anything to become qualified to be a marine
19 surveyor?

20 A. Beyond preexisting experience, no.

21 Q. Okay. So I'm going to -- there's -- there's
22 a method to my madness here. When I -- I looked you
23 up in the 2016 SAMS and NAMS directories, and I didn't
24 find you, but I did find you online with SAMS.

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1 So --

2 A. Yes.

3 Q. -- I just wanted to ask; could you explain
4 what that is and what you needed to do to become a
5 member of SAMS?

6 A. So there's multiple levels within -- SAMS is

7 the Society of Accredited Marine Surveyors. There's
8 multiple levels within SAMS. There's what they call
9 an SA, which is what I am, Surveyor Associate.

10 And there's what they call an Accredited
11 Marine Surveyor. So, to become an accredited marine
12 surveyor, you have to show that you have five years of
13 experience as a marine surveyor or in relative fields.
14 So, relevant -- relevant previous experience.

15 And so, when I joined SAMS, they gave me a
16 couple of years of previous experience. And if --
17 I've had a little disagreement with SAMS, because they
18 are an international organization; however, they're --
19 they're US-based, and they have a -- they have a
20 little issue with our -- the way our -- we write our
21 reports, because we operate in the BVI, which is a
22 separate legal jurisdiction. And so there's some --
23 some boilerplate they don't like, but, of course, one
24 of the requirements to become an AMS is that five

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1 years' experience.

2 Another -- along with continuing education
3 credits, which we do every year, there is a
4 requirement that you attend one of their annual
5 general meetings every five years, and, obviously, for

6 almost the last two years, we've been unable to do
7 that because of COVID.

8 Q. Okay. So were you an AMS and lost the
9 credential, or have you not yet reached that level?

10 A. I have not yet had the opportunity to reach
11 that level.

12 Q. Okay. And -- and to do that, you would need
13 them to acknowledge more credit for time; is that
14 correct?

15 A. I would -- I would need to attend a -- an
16 annual general meeting in the US.

17 Q. Which isn't possible right now because of
18 COVID --

19 A. Right.

20 Q. -- right?

21 A. Correct.

22 Q. Okay. If -- if it was possible, would -- is
23 that the last thing that you would need to do, or is
24 there anything else?

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1 A. I'm waiting on an approval on -- on yet
2 another report, but that's it.

3 Q. When you said that there are things about the
4 reports that they don't agree with, can you elaborate
5 on that?

6 A. They have some standard wording, some
7 boilerplate that they like to see from a -- from a
8 legal liability standpoint in the, sort of, standard
9 SAMS reports.

10 I think some of that stems from the fact that
11 they do offer some B&O and some general liability
12 insurance through SAMS. We carry our own. The issue
13 that we have -- we actually have somewhat in-house
14 counsel here as well, but we operate under UK law or
15 BVI law, which is based on UK law, which is a little
16 bit different. And so we have -- we have our own
17 boilerplate, which doesn't quite match up with what
18 they want.

19 Q. Are you -- is that boilerplate contrary to US
20 laws?

21 A. I don't believe so, no. It's just -- it's
22 just not the -- the verbiage that SAMS wants.

23 Q. Okay. I --

24 A. And -- and just to clarify, that boilerplate

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1 is relevant to condition and valuation surveys, not
2 damage surveys.

3 Q. Okay. So let's go back to what we talked
4 about before. You had mentioned, when we were talking

5 about the Necker Belle, that there was some later
6 development that you --

7 A. Sure.

8 Q. -- wanted to mention.

9 A. So it -- it may or may not be relevant, but
10 just in case it is, I'll -- I'll sort of update the
11 résumé here, verbally.

12 Obviously, since COVID hit, the country's
13 been closed. There hasn't exactly been a whole lot
14 going on in the marine surveying world, and I have
15 since fallen into this, sort of, role of helping the
16 country develop its COVID protocols. I was elected
17 last year as the Chair of the Marine Association,
18 which represents all of the marine businesses in the
19 BVI. Main -- it mainly serves an advocacy role with
20 the government.

21 I have also been appointed in the last year
22 to the Premier's Economic Advisory Counsel, which, I
23 think, there's somewhere between seven and nine of us
24 which are personal advisors to the Premier, the leader

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1 of the country. And my specific role is to advise on
2 marine matters. So I've -- I've fallen into a --
3 let's call it a marine consult -- consulting role for
4 both the industry and the government here. Some of it

5 is in terms of economic policy. Some of it is in
6 terms of, for instance, our -- our safety standards.

7 So we talked a little bit about the MCA and
8 different flag states. One of the governing documents
9 for different flag states -- or for -- for MCA flag
10 states is a document called MGN280. It is the -- the
11 standards of safety for small commercial vessels.
12 Then there's a little bit of a gap in the way that the
13 BVI government have applied this over the years and in
14 the way that it's written. And that, obviously, has a
15 significant economic drawback to just start enforcing
16 the rules overnight when they haven't been enforced
17 for 15 years.

18 So, probably, the -- the more significant
19 part of -- of these new roles relevant to this is that
20 I've been appointed to, sort of, advise the government
21 on -- on how they can mitigate their risk while
22 working within the rules and -- and make things work
23 economically for the businesses as well.

24 Q. Now, when you're talking about small

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1 commercial vessels, are you talking about these kind
2 of sailing charter vessels like you worked on?

3 A. So, under the MCA rules, a small commercial

4 vessel would be anything under 24 meters and anything
5 under 12 passengers or 12-and-under passengers. And
6 that's 24 meters in load line length, so that's -- in
7 simple terms, that's water line length, not overall
8 length.

9 Q. And when you -- so, again, the vessels that
10 you were the charter captain for, are -- do they fall
11 under that rule?

12 A. Everything except Necker Belle and
13 The Collection. They --

14 Q. Okay. Those were --

15 A. -- would be classed as what we call --

16 (Technical difficulties.)

17 MADAM COURT REPORTER: I'm sorry, sir,
18 you broke up.

19 Can you please repeat what you just said,
20 they were something?

21 THE DEPONENT: Sure.

22 A. I said, everything except the Necker Belle
23 and The Collection, they would be classed as large
24 yacht, under the MCA code.

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1 Q. Is there a different code in the United
2 States for that type of a vessel?

3 A. Correct.

4 Q. Are there any highlights you could give me
5 about how those might be different?

6 A. US code isn't -- isn't particularly my
7 specialty. I don't generally deal with US commercial
8 vessels. I know there are a number of CFRs and Coast
9 Guard standards that would be applied. Anything under
10 six passengers in the US can go uninspected, I
11 believe. They have an uninspected passenger vessel
12 system, but I wouldn't want to advise you on that too
13 far. Like I said, it's not really my field.

14 Q. Are the -- are there different roles for
15 private vessels as opposed to the commercial ones?

16 A. Correct. Private -- private vessels have
17 very few rules beyond what -- what safety equipment
18 they need to carry on board --

19 Q. Okay.

20 A. -- and the US Coast Guard standards on that
21 are very relaxed, in -- in my view.

22 MS. NIEMEYER: Laurie, how are you doing?

23 MADAM COURT REPORTER: I'm doing great.

24 I can go for another 15 minutes, if you'd like.

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1 MS. NIEMEYER: Okay. All right. I just
2 wanted to make sure.

3 MADAM COURT REPORTER: Thank you.

4 BY MS. NIEMEYER:

5 Q. So, Mr. Ball, what is a marine surveyor, in
6 your words?

7 A. Like I said before, there are a number of
8 different types of marine surveyor. In -- in my view,
9 it would be somebody with subject-matter knowledge
10 that would make an assessment of a vessel, or, in this
11 case, an incident, and offer a professional opinion
12 and assessment, if you will.

13 Q. Okay. And as a marine surveyor, is there any
14 kind of a written description that -- for instance,
15 with SAMS, where you're accredited, is there any kind
16 of a specific written description that says what you
17 can and can't do?

18 A. There are a number of ethical standards; one
19 of which is, obviously, don't -- don't work beyond
20 your means, your qualifications, your experience.
21 Don't work when you're in conflict.

22 SAMS certainly has an ethical policy. So
23 does NAMS, so does IMS. There are a number of
24 different -- obviously, in the US, you have SAMS and

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1 NAMS. In the UK, we have the Royal Institute of
2 Naval -- Naval Architects, we've got the National

3 Institute of Marine Surveyors. It depends where you
4 go in the world. There are a number of them. Some
5 are more respected, and some are less respected than
6 others.

7 Q. Okay.

8 A. I -- I would -- I would hope that they all
9 follow the same sort of general ethics standards.

10 Q. And -- and can you, in a broad brush, explain
11 what those ethical standards are?

12 A. I think I just did, but, you know, the -- the
13 -- the two main broad strokes, I would say, are,
14 obviously, not working when you're in conflict and not
15 working beyond your skills and ability.

16 Q. Okay. Now --

17 A. On that note, actually --

18 Q. Okay.

19 A. -- I should probably elaborate a little on
20 how this office works.

21 So we don't -- we don't work as, sort of,
22 singular surveyors, per se. Obviously, when we attend
23 overseas, we work as singular surveyors, but you'll
24 notice in all of our reports that there are two

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1 signatures. Almost everything we do in this office is

2 reviewed by another one of our surveyors.

3 So we have the benefit -- you know, I see
4 that you're -- you're going down the résumé here. In
5 reality, there are two résumés, at least, that would
6 be part of the assessments that we've made in these
7 reports. So we have a -- a review system. We call it
8 internal quality control, if you will.

9 Q. Okay. So I was going to get to that when I
10 pull out your report.

11 But -- so Mr. Bailey also signs that report?

12 A. Correct.

13 Q. What level of review did he have when he
14 pulled out that report?

15 A. So we generally discuss these things either
16 in the office or on the phone. When I'm attending a
17 claim overseas, he -- he probably hates me because of
18 my phone bill, but we -- we speak verbally, you know,
19 more than once a day. When I return, we go over the
20 case, we go over the photographs, we go over all the
21 details. So, you know, on -- on one level, I can say
22 that he's intimately aware of what's going on in the
23 case. On the other side, I can say, well, he wasn't
24 there, I was.

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1 So I do believe that Bill, as the principal

2 surveyor here, who is doing most of the reviewing
3 work, had as much detail as -- as he could have before
4 he signed off on this report. He obviously had the
5 opportunity to review what was written in the report,
6 review the photographs, review, you know, whatever
7 evidence we have on each individual case and ask
8 questions.

9 Q. Okay. Again, I'm going to ask for a
10 definition in your own words of what you understand
11 something to be.

12 What is an insurance adjuster?

13 A. It's somebody that reviews and quantifies the
14 claim in relation to the insurance contract.

15 Q. Is it your understanding that an adjuster
16 makes a decision about whether there's coverage?

17 A. No.

18 Q. What is your understanding about that?

19 A. It's my understanding that the adjuster would
20 make recommendations to the underwriter.

21 And just to be clear, in -- in this case, we
22 are not working as adjusters.

23 Q. Okay. That was going to be my next question.

24 What, exactly, was your role in this case?

1 A. We were there as surveyors.

2 Q. What -- what kind of a relationship were you
3 expected to have in rel -- like, vis-a-vis, you and my
4 client, Mr. Andersson?

5 A. I would -- I -- I believe I was expected to
6 take a statement as to what happened, which I did, and
7 to advise him on what his next steps could be, who his
8 points of contact were. One of the things that we
9 would do in advance of working towards adjustment
10 would be -- and I'm sure this is going to come up in a
11 minute -- to determine a reasonable cost of salvage,
12 if that's necessary.

13 In this case, we did, but we never got around
14 to appointing salvors. But it -- it -- in a large --
15 in a large sense, you know, our relationship on
16 initial attendance is to get a grip of what is
17 happening on the ground and assess the -- the next
18 steps, the next reasonable steps, to mitigate loss.
19 And --

20 Q. Did you ever --

21 A. -- of course --

22 Q. -- convey the --

23 MADAM COURT REPORTER: I'm sorry.

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1 BY MS. NIEMEYER:

2 Q. -- fair and reasonable cost to --

3 MADAM COURT REPORTER: Michelle --

4 MS. NIEMEYER: I'm sorry.

5 MADAM COURT REPORTER: -- he said
6 something after something after to mitigate cost
7 [sic]. I didn't hear what you said, sir.

8 A. I said to mitigate loss and, of course, to
9 quantify loss.

10 Q. Okay. You mentioned that you had calculated
11 the fair and reasonable cost of salvage; is that
12 correct?

13 A. I had discussed with salvors as to a fair and
14 reasonable price to remove the vessel from the reef,
15 yes, to salve the vessel.

16 Q. And when did that happen?

17 A. That was on the beach the same day I
18 attended. We went out and had a look at the wreck and
19 then we sat on the beach, Mr. Andersson and a salvor
20 and myself.

21 Q. Do you recall who that salvor was?

22 A. Not off the top of my head I'm afraid.

23 Q. Okay. Did you have -- ever have any
24 conversation with any other salvor than that one that

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1 you talked to on the beach?

2 A. No, and we never had any further conversation
3 either.

4 Q. Do you remember what he said?

5 A. Not anything that I would want to testify to,
6 not that clearly. Unfortunately, there's quite a lot
7 of time between then and now.

8 Q. What do you remember?

9 A. Again, nothing -- nothing clear enough that I
10 would want to -- I would want to risk putting it on
11 the record.

12 Q. Okay. So you're -- is it fair to say at this
13 point, you're just -- you're not sure?

14 A. Correct.

15 Q. Okay.

16 A. I -- I would be guessing if I were to say
17 anything, and I don't think that's fair to anybody.

18 Q. Okay. Did you, at the time or around the
19 time of that situation, communicate with Mr. Bailey in
20 writing? I know you said you spoke on the phone; did
21 you have any written communications with him about
22 what was going on when you were there to inspect the
23 boat?

24 A. Again, a long time ago. I -- I would doubt

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1 it. We speak often enough on the phone that, you
2 know, I wouldn't have any real reason to write
3 anything, especially since, you know, I'd be heading
4 back here fairly imminently. I won't say it's
5 impossible, but I -- I think it's unlikely.

6 Q. Is it fair to say your standard business
7 practice was to talk on the phone?

8 A. When -- when I have phone service and I'm
9 afar, yes.

10 Q. Are you aware of whether Mr. Bailey took any
11 notes related to this particular survey and --

12 A. I am not.

13 Q. -- his conversations with you?

14 A. I am not aware, no.

15 Q. In your experience in your office, was it
16 standard for Mr. Bailey to take notes on phone
17 conversations?

18 A. No. I mean, if there's -- if there's broad
19 strokes with action points, absolutely. You know,
20 it's a method of -- for us to, sort of, remember what
21 we need to do. But in terms of, you know, the phones
22 -- the phones ringing, and I'm going to write myself a
23 -- you know, a broad transcript of what's considered
24 on the phone, no, it's not.

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1 Q. Okay. Do you use a note function on your
2 phone when you do things like this?

3 A. Sometimes I use a note function on my phone.
4 More often than that not, if I'm out in the field,
5 it'll be -- it'll literally be me writing on paper.

6 You know, as an example, when we took
7 Mr. Andersson's statement, I wrote it on paper
8 (indicating) and then I later sent him an e-mail that
9 transcribed what was there and asked him if he would
10 be willing to sign that it was accurate.

11 But we -- we have some -- some constraints,
12 depending on where we are. You know, sometimes we're
13 in a very remote location. You know, I -- I -- I did
14 a job in Cuba a few years ago where we didn't even
15 have electricity for three days, so the note function
16 on a note doesn't really work, you've got to do it on
17 paper, you know.

18 And then we swam out to the wreck, so there
19 wasn't really a way to keep -- to keep anything dry.
20 So, you know, we took a waterproof -- a waterproof
21 camera, a photo's kind of worth a thousand words, and
22 I have somewhat of a way of taking photos to remind me
23 as to what I want to write in my report as well.

24 Q. Okay. Okay. So when you said you swam --

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54

1 not in Cuba -- in this survey, you swam to the boat?

2 A. Yes.

3 Q. Okay.

4 A. We waded out, let's say. It was about neck
5 deep.

6 Q. Okay. And I want to just back up a bit so
7 that we don't miss things here.

8 Are you an insurance adjuster?

9 A. No.

10 Q. Okay. So you were not in this capacity and
11 you are not.

12 Are you becoming one, or have you done any of
13 the education to become an insurance adjuster?

14 A. No, Bill is. And in -- in the BVI, Caribbean
15 Marine Surveyors is licensed as a loss adjuster. It's
16 a little bit strange here. They license the company
17 and not the individual.

18 Q. Do you know for how long Bill and the company
19 have had those credentials?

20 A. I don't know specifically, but if I were to
21 give an estimate, it would probably be at least 15
22 years. I think -- I think part of reason that the
23 company is licensed instead of the individual is -- is

24 grandfathering, so that would've been some time ago.

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1 We have a -- you know, the -- the largest
2 part of our economy here is financial services, so the
3 -- the regulation thereof has, obviously, increased
4 over the last decade or so.

5 Q. Okay. Are there any parts of the report and
6 -- and I'll get to the actual report, but you
7 mentioned we'd talked about that both you and Bill
8 Bailey signed off on a report that went to Great
9 Lakes, correct?

10 A. Correct.

11 Q. And, in that context, are any parts of that
12 report written by Bill as opposed to written by you?

13 A. No. I wouldn't say so. There are aspects of
14 the report where he will say, you know, is that -- are
15 you sure that's what you want to say? It might be
16 better said like this. There's definitely an
17 editorial license, but there is nothing that he would
18 change without my permission.

19 Q. Okay.

20 A. So there's -- there's nothing in there that I
21 am not comfortable with my signature on.

22 Q. Okay. And there's nothing there that you

23 didn't write, and if there was a change made, it was
24 made with your understanding and having taken advice

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1 from Bill; is that correct?

2 A. Correct.

3 Q. Okay.

4 (Off the record at 11:01 a.m.)

5 (Recess taken.)

6 (Back on the record at 11:12 a.m.)

7 BY MS. NIEMEYER:

8 Q. So we were talking about, in generalities,
9 the involvement of Mr. Bailey as -- as your coworker,
10 I'll say, on this -- on dealing with this report.

11 And I wanted to ask; did Mr. Bailey do
12 anything independently of what you did to gather
13 factual information?

14 A. Not to my knowledge, no.

15 Q. Do you know if he spoke with any witnesses?

16 A. Not to my knowledge, no.

17 Q. Do you know if he had any conversations
18 separate from yours with Mr. Andersson?

19 A. Beyond the initial appointment while we were
20 setting up my travel and for me to travel to Dominican
21 Republic to meet Mr. Andersson, not to my knowledge,
22 no.

23 Q. Does your company keep a file -- a -- a
24 central file for every claim where you would have all

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1 of the information, regardless of whether it's yours
2 or Mr. Bailey's, put into that file?

3 A. We do. It's spread all over my desk right
4 now.

5 Q. Does that include those kind of notes that
6 you would've taken or that he would've taken?

7 A. It includes my handwritten notes. What it
8 doesn't include is printouts of all the e-mail
9 transcripts, because those are -- we've got those
10 stored electronically.

11 Q. Okay.

12 A. (Deponent viewing documents.) So, right in
13 front of me, I have some of the -- some of the
14 various, more prominent letters, the original
15 insurance survey, the signed statement from
16 Mr. Andersson, my -- my own résumé, the policy, our
17 reports, some of the legal documents, et cetera. But,
18 some of the stuff, we would just leave on our server
19 as well.

20 So we have a -- a central paper file as well
21 as a central electronic file. Most everything that's

22 in the paper file is stored electronically, aside from
23 my handwritten notes, obviously, and then the e-mail
24 correspondence would be separate on our e-mail server.

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1 Q. Does --

2 A. And I believe that we -- I believe we created
3 a bundle of this to provide for discovery as well.

4 Q. Okay. So, when you -- when you keep your
5 e-mails, are they generally all mixed up, or do you
6 keep them in folders based on what the claim is?

7 A. No. We keep them in folders based on the
8 claim.

9 Q. Okay. There's a method to this madness.
10 Do you know if Mr. Bailey made any decisions
11 related to coverage on this case?

12 A. I don't, no.

13 Q. Do you know if he did any sort of an analysis
14 of the provisions in the policy with respect to the
15 claim that was being made?

16 A. I think -- we definitely, obviously, looked
17 at the navigational limits on the policy. Beyond
18 that, I don't believe so, no.

19 Q. And did you, independently, do any kind of
20 evaluation as far as reviewing the policy in
21 comparison with the facts in this case?

22 A. Absolutely. Yeah, we always -- we always
23 look at the policy, and we might make recommendations
24 on it. Obviously, in this case, we're not working as

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1 adjusters, so, you know, we're -- we're offering our
2 -- our review, but not specifically advice as an
3 adjuster.

4 Q. Do you do work for other insurance companies
5 besides Great Lakes?

6 A. We do, indeed.

7 Q. And who are the other insurance companies you
8 do work for?

9 A. Probably most notably, Guardian and Massy,
10 which are Caribbean-based. I think Guardian is
11 actually reinsured again by Willis Towers Watson, who
12 we also work for. A number of the insurers that we
13 used to work for stopped writing marine policies in
14 the Caribbean after Hurricane Irma or after Hurricane
15 Dorian.

16 So, in the past, there's been Falvey Yacht
17 Insurance, Flagship's still around, Caribbean
18 Alliance. We've done stuff for Geico Boat US.

19 We -- we make a -- a lot of relationships
20 with a lot of different underwriters through

21 catastrophe response, so we're generally one of the
22 first teams on the ground after a big hurricane comes
23 and wipes everything out in the Caribbean which is,
24 unfortunately, a fairly regular occurrence. So,

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1 obviously, once -- once these guys find out we're
2 there, they say, okay, you know, let's see if you can
3 do some work for us.

4 So we do -- we represent a -- a wide range of
5 underwriters. There is a, sort of, core group that
6 insures some of the larger fleets, and there's --
7 there's very few insurers now that will offer
8 reasonable coverage through hurricane season.

9 So the -- the pool of -- of, sort of, working
10 insurers in the Caribbean has been getting smaller and
11 smaller.

12 Q. Now, is -- is that also true for outside of
13 hurricane season?

14 A. No, it's not. I mean, you know, obviously,
15 boats move, so there's a -- there's a fair number of
16 private boats that will come down seasonally and
17 either go down to Grenada or up -- up north of the
18 Carolinas for hurricane season. Or, you know, some of
19 them have policies that they say they can hole out in
20 Florida.

21 But, certainly, since we had Irma and Maria
22 here in 2017, the -- the number of underwriters
23 willing to offer, you know, reasonable coverage
24 without, you know, crazy-named storm deductibles or

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1 depreciation policies, et cetera, has gone down. And
2 so it -- it leaves a much smaller pool.

3 I mean, if we look, we've got somewhere
4 around 750 bareboats in the BVI, which are --
5 they're -- they're commercial boats, they don't have a
6 crew on them, and it's a bit like renting an RV, but
7 it's a boat. And those boats are in 12 or 13
8 different charter fleets. Probably, at least, seven
9 or eight of them are insured by -- by one underwriter,
10 which was the case before Hurricane Irma, it was a
11 different underwriter, which no longer writes. But
12 it -- it makes -- it makes the -- the pool relatively
13 small, locally.

14 Obviously, pre-COVID, we would work all over
15 the Caribbean. So we would go -- we have -- we have
16 an office in Grenada, as I previously mentioned, but
17 we would go everywhere from, sort of, Grenada up to
18 Florida. It's a bit strange that people would want us
19 to go to Florida, given that there's an -- an ample

20 supply of surveyors there, but, occasionally, a, you
21 know, a claim will start here and repair will be done
22 in Florida, and they want to have somebody that's
23 already familiar with the claim.

24 You know, I do -- I do new build work as far

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1 as Poland, so we -- we travel all over the place.

2 To go back to your original question, which I
3 digressed on, there are a number of underwriters we
4 work for, yes.

5 Q. Okay. And -- and you mentioned that you
6 usually look at navigational limits, so that -- that
7 leads me to another question, which is, is it -- how
8 -- how does this navigational limit provision compare
9 to what you generally see for boats that are in the
10 Caribbean?

11 A. I -- it's -- it's comparable to what I see on
12 most policies. At least for private vessels. So, for
13 a -- a bareboat charter boat, they will have
14 provisions that say things like, they can't move at
15 night unless it's an emergency, you know, they're not
16 -- they're not supposed to go more than 20 miles from
17 land. But that's, obviously, an entirely different
18 risk model.

19 There's no -- there's nobody qualified on

20 board. And the vessel isn't -- the vessel isn't set
21 up to go that far either. So we were talking a little
22 bit before about the MCA standards and the different
23 categories.

24 The MCA has Category 0 through 6; zero being

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1 you can take paying passengers anywhere in the world,
2 you can sail around the poles -- that's based on some
3 very extensive structural engineering requirements, as
4 well as safety equipment -- all the way down to
5 Category 6, which is, sort of, daytime-only inland
6 waterways.

7 So a hundred and fifty nautical miles from
8 shore would be classed under the MCA's Category 1.
9 Our average charter boat in the Caribbean is what we
10 call Category 4, which is daytime only.

11 Q. Okay. So I'm a little confused because
12 you -- you said the hundred and fifty nautical miles
13 from shore would be Category 1, but you also said
14 that --

15 A. Correct.

16 Q. -- you could go anywhere in the world, cross
17 oceans (laughs), that doesn't work, right?

18 So what would that --

19 A. That category --

20 Q. -- re -- what -- what would you do --

21 A. -- that category --

22 Q. -- is there a --

23 MADAM COURT REPORTER: I'm sorry.

24

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1 BY MS. NIEMEYER:

2 Q. I'm sorry?

3 MADAM COURT REPORTER: Can you please

4 repeat that, sir? I --

5 THE DEPONENT: Yes.

6 MADAM COURT REPORTER: -- couldn't hear

7 you.

8 THE DEPONENT: Sure.

9 A. I -- I was saying, that's Category 0.

10 Q. Okay.

11 A. So it starts with Category 0, which you can

12 go anywhere in the world, cross oceans. And -- and

13 let's keep in mind as well that these are commercial

14 standards, so this is for when you have paying

15 passengers on board.

16 At the same time, I would -- I would view

17 them as a, sort of, minimum reasonable standard in

18 terms of safety equipment and, you know, it -- if it

19 -- if it's -- if it's a minimum standard of safety to
20 take paying passengers as far as your duty of care,
21 why would it not be the minimum standard for you as a
22 private operator.

23 Does that make sense?

24 Q. It -- it makes sense on -- from a logical

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65

1 perspective, yes. (Laughs.) It may or may not be the
2 legal standard, but it makes sense from a logical
3 perspective --

4 A. Yeah.

5 Q. -- so I understand what you're saying.

6 A. (Deponent nods head.)

7 Q. So, the hundred and fifty nautical miles, is
8 that something that's crafted, so to speak, that -- is
9 that something that's used worldwide for any kind of a
10 Category 1 vessel, or is that something that's
11 specific to the Caribbean?

12 A. It would -- the categ -- the different
13 category numbers I gave you are specific to the MCA,
14 which is specific to Red Ensign flags. So,
15 unfortunately, every flag has their own, sort of,
16 model, if you will. I'm sure that the US Coast Guard
17 would have different -- let's call them dividing

18 lines, as far as navigational limits.

19 Q. All right.

20 A. As far as how underwriters assign this, I
21 don't know. You know, not my department.

22 Q. Okay. Now, let me ask you another question
23 kind of related to this, the navigational limits both
24 refer to the miles from shore, as well as referring to

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66

1 the specific countries that the vessel is not allowed
2 to go to, correct?

3 A. Correct.

4 Q. And, in particular, in this -- this policy,
5 relevant to this matter, the vessel was precluded from
6 going to Venezuela or Colombia; is that correct?

7 A. I could check the policy, but I'm sure you --
8 I'm sure you're right.

9 (Deponent viewing document.) I won't
10 question -- yes, Cuba, Colombia, Haiti and Venezuela.

11 Q. Do you have any understanding about why the
12 vessel was not allowed to go to Venezuela?

13 A. I don't want to speak on behalf of
14 underwriters, but, if I'm to give an opinion,
15 sometimes it is about crime rates, risk of theft,
16 piracy, et cetera. Sometimes it's a little bit more
17 about diplomatic relations.

18 As an example, I handled a claim in Cuba a
19 few years ago where the Cuban government decided to
20 effectively arrest the vessel that had run aground,
21 but also would not allow the captain to leave, because
22 they claimed that it would be abandonment if he left,
23 even if he left somebody in his stead as his agent.
24 He had a heart condition, and he was kept on the beach

▲

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1 there for three months.

2 So, obviously, that -- you know, an incident
3 like that would be a huge risk to underwriters. And
4 the -- and the diplomatic relations between the -- the
5 British Embassy and the Cubans and the -- in this
6 case, the Canadian Embassy was involved as well. You
7 know, it gets -- it gets very expensive and very
8 complicated.

9 You know, the Cuban government, sort of,
10 tried to rake us over the coals on the salvage, and,
11 subsequently, you know, if I was an underwriter, I
12 would just say, that's not a risk I want to take on.

13 Q. Particular to Venezuela, do you have any
14 personal experience in dealing with Venezuela in the
15 last, let's say, five years?

16 A. I don't, but I am -- I believe I'm aware that

17 they have some sort of a political upheaval going on
18 right now and -- and a bit of a migrant crisis as
19 well.

20 Q. Have you been asked to go to Venezuela to
21 handle any claims in that time frame?

22 A. No. And I -- I would not want to go there.

23 Q. Why not?

24 A. It doesn't sound like a very safe place to be

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1 right now.

2 Q. Does Mr. Bailey go to Venezuela for claims?

3 A. I'm sure not in the last ten years.

4 Previously, if we look back, sort of, 20, 30 years in
5 Caribbean history, Venezuela and Trinidad used to be
6 very favorable places to take boats for repairs.

7 So, for instance, if you had a
8 hurricane-damaged boat that had significant, let's
9 say, water damage to the interior, you could go down
10 to the Venezuela and get some beautiful woodwork done
11 that was very high quality at a very low price. And
12 so there was a bit of a market of people taking broken
13 boats from up here down there, repairing them and
14 bringing them back, but it's -- it's not the case
15 anymore.

16 Q. Okay.

17 A. So I -- I can't speak to what Bill did before
18 I met him, but he -- but we haven't done a claim in
19 Venezuela since I joined this company.

20 Q. Okay. If you were asked by someone whether
21 they should cruise to any of the islands north of
22 Venezuela, would you recommend that they go there?

23 A. Yes, absolutely. I've spent a fair amount of
24 time in Bonaire and Aruba, lovely places, very safe.

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1 I actually took a vacation to Bonaire a few years ago
2 when the Venezuelan situation was just starting to
3 heat up, and I was somewhat amazed that we were -- we
4 were only something like 90 miles from Venezuela, and
5 they had a huge migrant crisis, and there was no -- no
6 need for security, no nothing. I can only assume that
7 the Dutch Navy was out there, but very -- it seemed
8 very secure, lovely place.

9 Q. Okay. Now, Aruba is not part of Venezuela,
10 correct?

11 A. Correct.

12 Q. Is Bonaire part of Venezuela?

13 A. No.

14 Q. And there are a number of islands as you head
15 east from Aruba that do belong to Venezuela, correct?

16 A. Some closer to Venezuela, yes.

17 Q. Would you recommend someone go to those
18 islands?

19 A. No.

20 Q. Why not?

21 A. The same reason. Venezuela doesn't seem like
22 a very friendly place to be right now.

23 Q. Would you consider it a -- a factor for your
24 personal safety?

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1 A. Yes, absolutely. If I were asked to handle a
2 claim in Venezuela, I would be asking for a security
3 team.

4 Q. Would you go to port in Venezuela for your
5 crew member who had a minor -- minor medical
6 situation?

7 A. For a minor situation, I would not.

8 Q. Okay.

9 A. If I believed that my vessel, my life or my
10 crew's life were in grave or imminent danger,
11 obviously, absolutely. Any port is good in a storm.
12 But, you know, every -- every risk has to be weighed
13 up, and I would say, you know, as long as nobody's in
14 grave danger, crack on, let's go a little bit further
15 to our closest safe port.

16 Q. Okay. I -- I have a question for you, and
17 this is a sailing question. It seems you've had a
18 great deal of experience sailing catamarans and
19 sailing, generally.

20 If you were in heavy seas with heavy winds,
21 would you sail a catamaran straight downwind?

22 A. Yes. There are --

23 Q. And also --

24 A. -- a num -- there are a number of

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1 contributing factors here. If you are -- I mean, if
2 you're in the middle of a hurricane, let's say,
3 sailing downwind may not be your -- your safest angle
4 of approach. You may be better off dropping a sea
5 anchor and just weathering the storm. You have to --
6 you have to sail to the ability of the vessel.

7 However, and I -- I feel like I can kind of
8 see where you're going with this particular situation.
9 My opinion would be that the best thing that you could
10 do is get as close to downwind as possible. The
11 reason being is the sea state. The sea state is -- is
12 arguably what led to the sea sickness issue on board.

13 If you think about -- the analogy I like to
14 use about waves and heading into the sea versus with

15 the sea, imagine a -- a three-lane highway with cars
16 all running in the same direction on it. You want to
17 pass as few cars as possible, would you drive against
18 the traffic or would you drive with the traffic? You
19 want to go with the traffic, right? You want to --
20 you want to go over as few wave crests as you can and
21 then show the motion of the sea against the boat.

22 Does that -- does that analogy kind of ring
23 through?

24 Q. Sort of. So --

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1 A. It doesn't for everyone.

2 Q. -- sort of.

3 A. The --

4 Q. So I -- I understand that the waves may or
5 may not have the same direction as the wind, correct?

6 A. Correct.

7 Q. So does that answer really depend upon the
8 angle of the waves to the wind?

9 A. Yes. I'm -- I'm specifically speaking to the
10 sea state here.

11 So there's a number of environmental factors
12 at play. One is the direction of the -- the sea
13 surface, the waves, another is the direction of the
14 current, the actual water under the waves. Because

15 waves are created by a number of different factors;
16 they may be the weather on the surface, they may be a
17 swell that's generated by weather on the surface far,
18 far away. But there may also be a local current in
19 another -- in another direction. And then, of course,
20 you have the wind as well. So, generally --

21 Q. So -- and I -- and I know this is kind of a
22 -- you know, getting into Chapmans and boat handling
23 on heavy waters and all that. I -- I almost, and this
24 is a personal thing and I'm not going to make a big

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1 point of that, but I almost saw a friend's ocean pitch
2 pole in a certain sea condition where he went in a
3 trough and the wave just happened to be in a funny
4 angle (indicating).

5 Is it possible to have that --

6 A. Yup.

7 Q. -- happen if you're going downwind and the --
8 the angle of the waves isn't the right angle --

9 A. Not --

10 -- of the waves?

11 A. -- not in -- not in the sea state described
12 in this event. I mean, if you're out -- if you're out
13 sailing downwind in the middle of a Category 3

14 hurricane, yes.

15 Q. Now, how much familiar -- familiarity do you
16 have with the Catana 47 vessel?

17 A. I've surveyed a few of them in the past.
18 I've seen a lot around. Read -- read a lot about
19 them. They're marketed as performance cruisers; in
20 other words, a lightweight cruising boat that goes
21 faster than the others. Their performance, when
22 they're actually put into a -- into a cruising
23 situation, has been very slightly above average, but
24 certainly not the way that they advertise the boat.

▲

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1 And I'll preface that with, the way that
2 manufacturers advertise performance boats, they will
3 run a boat with no equipment on it, no ship stores,
4 tank's empty, as light as they can get it, with racing
5 sails on it, in perfect sea conditions, on the perfect
6 wind angle, probably with the current with them, just
7 -- just because, and they'll try and get maximum speed
8 out of it.

9 But what you see advertised as maximum speeds
10 on these boats is not what you're going to achieve
11 in -- in a -- in an ocean-going state. You might
12 achieve it on an inland lake, but once you've -- once
13 you've got some sea state against you, I mean, a cubic

14 meter of water is the metric ton and that's fresh
15 water. Salt water's just a little bit heavier. So
16 every wave that you hit letters a massive amount of
17 force against you.

18 Q. Now, how about the construction of that sort
19 of vessel, is it constructed less heavily, let's say,
20 to be faster, as opposed to be sturdier?

21 A. In terms of "heavily," because you used that
22 word, yes, I would say so, because the -- the vessel
23 is designed to be lighter. In terms of strength, I
24 would say that it is just as strong as any other

↑

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1 cruising catamaran.

2 The -- the builders of this boat are French,
3 and it is from an era -- well, they don't build them
4 like they used to. When this boat was built, there
5 was more of a feeling towards building a cruising
6 catamaran for an owner, something that would last.

7 If we look in the last, sort of, let's say,
8 five -- five to eight, five to ten years, the cruising
9 catamaran market has changed significantly in that
10 most of these boats are built to go into charter
11 fleets. They're built to be floating condos. They're
12 not made to really go to sea anymore.

13 And the greatest example of this, I can think
14 of, is that the majority -- ten years ago, the
15 majority of the cruising catamarans that came into our
16 fleets were delivered on their own bottoms. They were
17 sailed here from, generally, South Africa or France.

18 Now, they are shipped. They're a lot
19 thinner. They're a lot less strong. They're a lot
20 less durable. This boat, I would say, by design --
21 obviously, I didn't see it before most of the bottom
22 of it was gone, but my history with the Catana 47 or
23 the 471 is that they are well-built, quality boats.

24 (Pause.)

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1 MS. NIEMEYER: All right. I'm going to
2 close down this document. Actually, you need -- do
3 you --

4 THE DEPONENT: Yeah.

5 MS. NIEMEYER: -- need to give me control
6 back?

7 I can stop sharing it. No --

8 THE DEPONENT: (Viewing computer.) Ahh
9 --

10 MS. NIEMEYER: -- you don't have control
11 anymore. I took it away (laughs), so let's just go to
12 something different here, which -- let's see. I'm

13 going to show you my screen. And this time, I'm going
14 to show you a folder.

15 BY MS. NIEMEYER:

16 Q. Can you see that?

17 A. (Deponent viewing computer.) Yup.

18 Q. Okay. This is a folder actually from my
19 files which contains the copies of the documents that
20 came on two CDs to me from the counsel --

21 A. Okay.

22 Q. -- for Great Lakes. And I'm going to --
23 particularly -- we're going to go through these
24 documents. I'm going to give you control so you can

↑

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1 page through each of them.

2 These are large groupings of documents,
3 mostly. And I have to assume, but I don't know for
4 sure, that the ones with the Bates labels that say AB
5 came from you.

6 You mentioned that you had provided a file
7 and that, you know, you had -- your file, presumably,
8 they're -- I don't see any reason, other than your
9 initials are AB, why those documents would be labeled
10 AB, and that was, at least, what Mr. Usher's
11 understanding was as well when we took his deposition

12 and, you know, he wasn't able to give me an answer
13 about are these exactly the documents that Mr. Ball
14 provided.

15 So I want you to take a look, and the
16 question I have for you on each of these groups, we'll
17 just go through them one -- one by one, is first of
18 all, whether they are documents that came from your
19 file that were kept by you in the ordinary course of
20 business. And, second, if you happen to notice that
21 anything is missing from those groups of documents, if
22 you'll let me know that.

23 MR. GOLDMAN: Michelle, this is Michael.
24 I don't want to --

↑

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1 MS. NIEMEYER: Yes.

2 MR. GOLDMAN: -- interrupt or say
3 anything that might be construed as giving information
4 or testifying, but would you like to ask me anything
5 about them?

6 MS. NIEMEYER: Nope.

7 MR. GOLDMAN: All right. There you go.

8 MS. NIEMEYER: (Laughs.) Mr. Ball is --

9 MR. GOLDMAN: No. No. No. I -- I don't
10 mean --

11 MS. NIEMEYER: -- the one who is --

12 MR. GOLDMAN: -- asking what's in them.

13 I mean, asking about the Bates format.

14 MS. NIEMEYER: When we get to --

15 MR. GOLDMAN: That's all I meant.

16 MS. NIEMEYER: Yeah. I mean, if you want

17 -- if you want to answer the question what AB means,

18 I'd appreciate that.

19 MR. GOLDMAN: Yes. He gave me his file,

20 I organized it into that format and put the Bates

21 number. It means my organization of Andrew Ball's

22 file.

23 MS. NIEMEYER: Okay. So --

24 MR. GOLDMAN: I'm sorry. I didn't mean

↑

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1 to suggest I was going to testify.

2 MS. NIEMEYER: No, but --

3 MR. GOLDMAN: -- on something in the

4 documents, just the Bates number.

5 MS. NIEMEYER: -- but it's a -- it's a

6 straightforward answer. And -- and to the -- to

7 the -- to the degree you're comfortable answering this

8 or we could have a stipulation on it, to your

9 understanding, were all the documents produced --

10 MR. GOLDMAN: Yes.

11 MS. NIEMEYER: -- or are there --

12 everything that was given to you, to your

13 understanding, was produced to us?

14 MR. GOLDMAN: Yes.

15 BY MS. NIEMEYER:

16 Q. Okay. So it -- so, Mr. Ball, the purpose of

17 this is just, essentially, to make sure that

18 everything that you know you have actually ended up in

19 Mr. Goldman's office and produced to us, so that if

20 there's anything missing, we know. But also to

21 confirm that these really are the documents you kept

22 in the course of business in your offices or on your

23 computers.

24 A. Okay.

↑

80

1 Q. Okay. So we'll start with --

2 A. Good.

3 Q. -- start with this one, which is a Bates

4 range of AB001 to 90. And I'm just going to give you

5 control and ask you to page through that and let me

6 know if those are documents that were part of your

7 file kept in the ordinary course of business.

8 A. (Deponent viewing computer.) Sure. Am I

9 able to click on this (indicating)?

10 Q. You should be at this point.

11 A. (Deponent viewing computer.) Okay. Here we
12 go.

13 Is this working?

14 Q. Is it not working?

15 A. (Deponent viewing computer.) Well, I've
16 double clicked on it, and I'm and getting the -- the
17 little, swirly, round, I'm-working-on-it symbol.

18 Q. Okay. Okay. It's -- it's a large document,
19 so it might take a little longer for you to get
20 control over it.

21 A. Okay.

22 Q. These came as PDFs and sometimes multiple
23 hundreds of pages, so this one's 90.

24 A. (Deponent viewing computer.) I'm still

↑

81

1 getting the same flashing cursor. I wonder if it
2 might be easier if you take control and open the
3 document and then I page through it.

4 Q. Okay. Let's see. Let's see how I can do
5 this. Abort control. I just aborted control.

6 A. (Deponent laughs.)

7 Q. Okay. So, what I will do is, I'm just going
8 to scroll and stop -- tell me if you need me to stop.
9 Okay? Just tell me.

10 A. Sure. Yes.

11 Q. And I'm just going to scroll it with my
12 cursor like this (indicating).

13 Is that okay? Can you see that?

14 A. (Deponent viewing computer.) No. What I can
15 see right now is a cursor with a -- a little blue
16 circle next to it.

17 Q. Okay. So it's -- it's not showing you
18 everything. Let's try something else. I am going to
19 put this on -- maybe it's easier if I'm not scrolling.

20 All right. So I'm on Page 1, can you see
21 that now?

22 A. (Deponent viewing computer.) No, what I can
23 see is still the file table.

24 Can we just ask what somebody else can see,

↑

82

1 and then we can see if it's --

2 Q. Oh, you're not seeing the document, you're
3 seeing the folder.

4 MR. GOLDMAN: This is Michael Goldman.

5 I'm seeing exactly the same thing as Andrew.

6 BY MS. NIEMEYER:

7 Q. All right. So I need to change what I'm
8 showing you. Hold on a sec. I can do that. We're
9 going to stop sharing that. We're going to do another

10 share screen, and we're going to pick that page. I'm
11 sorry about that. It didn't -- it stayed on the
12 folder.

13 Okay. So, now, you should see the policy
14 which is Page 1 of 90?

15 A. (Deponent viewing document.) Yup.

16 Q. Okay. So I'm just going to page through.
17 Tell me to stop, and I'll try to do it in a
18 reasonably, you know, quick enough, but not like
19 so-fast-you-can't-see-it fashion.

20 A. (Deponent indicating.)

21 Q. Okay. So is that -- can you see me as I go
22 through those pages?

23 A. (Deponent viewing document.) Going through,
24 yup.

↑

83

1 Q. We're not going in detail here, so I'm just
2 showing you the pages.

3 A. (Deponent viewing document.) That all looks
4 familiar.

5 Q. Okay. So I just paged through the 90 pages.
6 And did you see those as I was going?

7 A. Yup. I saw the policy -- the policy, the
8 sheet on -- on how to hand -- how to register your

9 claim as an insured, I saw our two reports, I saw
10 Jon Sands' report from when the vessel was purchased
11 or when it was insured, and I saw -- I saw it all.
12 It's all -- it's all stuff I have anyways.

13 Q. Okay.

14 A. I saw a letter with Mr. Andersson --

15 Q. So -- so it's fair to say that all of the
16 documents that I just showed you, or all the pages,
17 are part of the file that you maintain in the ordinary
18 course of business in your offices?

19 A. Correct.

20 Q. And did you, personally, review all of those
21 in the course of creating your report?

22 A. Correct.

23 MS. NIEMEYER: Okay. So let's go on to
24 the next one.

↑

84

1 (Off the record at 11:46 a.m.)

2 (Discussion off the record.)

3 (Back on the record at 11:46 a.m.)

4 MS. NIEMEYER: Okay. Okay. Here we go.

5 So I've just opened a collection of documents. We're
6 not marking this as an exhibit, Laurie. I just want
7 to -- I'll get the Bates numbers on -- on the record.

8 MADAM COURT REPORTER: (Nods head.)

9 MS. NIEMEYER: The Bates numbers are
10 AB000091 through 265, so it's a 175-page document.

11 BY MS. NIEMEYER:

12 Q. And, Andrew, I'm going to do the same thing
13 on -- for things that I want to ask you --

14 A. Sure.

15 Q. -- detailed questions, I'm going to come back
16 to those.

17 A. Yeah.

18 Q. But, obviously, if you want me to stop so you
19 can see something, feel free to ask. But I'm just
20 going to page through that again, so that you can look
21 at it and tell me whether or not this is the record
22 that's kept in your file.

23 First of all, I'll ask you, you mentioned you
24 kept a separate file for electronic documents being

↑

85

1 your e-mails, does this appear to be what that is?

2 A. (Deponent viewing document.) It is, yes, and
3 this is part of what we've bundled up for Mr. Goldman.

4 Q. Okay. So I'm going to go ahead and just page
5 through so you can confirm that for me. I'm sorry, I
6 just -- procedurally, I need to do that.

7 A. (Deponent viewing document.)

8 Q. Okay. We just got through those 175 pages.

9 A. (Deponent nods head.)

10 Q. To your understanding, is that the e-mail
11 record that was kept in your file in the ordinary
12 course of business?

13 A. Correct.

14 Q. Do you know whether there were any additional
15 e-mails that were kept in a different location?

16 A. No, I don't believe there were. Obviously,
17 we just scrolled through that rather quickly. Without
18 doing a comparative analysis, I can't say for sure,
19 but I have no reason to believe that anything has been
20 excluded there.

21 Q. Were you, personally, involved in collecting
22 the information that was sent to Great Lakes --

23 A. Yes.

24 Q. -- or to their counsel?

↑

86

1 A. Yeah.

2 Q. Did you look for e-mails from Mr. Bailey as
3 well as your own?

4 A. No, he looked for his. So we -- we opened
5 a -- a folder to share with them, and we all did our
6 -- our individual data dumps, which probably resulted
7 in a lot of duplication, unfortunately, but everything

8 should be there. So we also dumped from our
9 administrative desk as well if there was anything
10 there.

11 Q. Okay.

12 A. The -- the three people that would've been
13 involved on behalf of Caribbean Marine Surveyors --
14 well, Caribbean Adjusters & Marine Surveyors, would be
15 myself, Bill Bailey and our office manager at the
16 time, Lenroy Quashie, who -- I don't recall him doing
17 anything specific with this case; however, he -- you
18 know, he handled -- he was our office manager, so he
19 may have -- if he was involved, we would've included
20 it, and we certainly would've asked him to dump
21 anything if there -- if there was anything relevant to
22 this case in this file.

23 Q. Okay. Were you asked to exclude any kind of
24 communications from the case file?

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87

1 A. No. Absolutely not.

2 Q. Now, when you did that collection procedure,
3 did you look also or ask about whether there were any
4 kinds of, for instance, messaging communications like
5 Whatsapp or SMS texting?

6 A. No, we didn't. That's a good question. I

7 don't -- I don't think we would've been using Whatsapp
8 on this case. We may have done. That's a very good
9 question, but, no, we didn't look into that.

10 Q. Did you have any communications with anyone
11 that you can recall, in your investigating this case,
12 that was not either Mr. Andersson or someone at Great
13 Lakes or -- not Great Lakes, but at Concept on their
14 behalf?

15 A. Well, we, obviously, had the meeting with the
16 salvor on the beach, and I also spoke to a man at a
17 dive shop, which is directly adjacent to the wreck
18 site, recently to confirm that the wreck was actually
19 still there.

20 Q. And -- and just -- you mentioned "a man."
21 Was that Alex Cottier?

22 A. That's the one.

23 Q. Have you ever had a conversation with Shaun
24 Farmer?

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88

1 A. I don't believe so.

2 Q. Do you know him?

3 A. No, I don't recognize the name.

4 Q. Okay. And besides having communicated with
5 the diver that you just mentioned, what was the
6 purpose of speaking with the diver?

7 A. We were -- we were trying to track down the
8 GPS following -- well, once we found out that
9 Mr. Andersson hadn't recovered it, we thought, well,
10 we'd better take steps to figure out if it's still
11 there, and so I was trying to ascertain as to who he
12 might have appointed to salve the vessel.

13 Obviously, we never got to a state where
14 underwriters appointed salvors. And so, you know, in
15 order to figure out where the GPS may have gone, we
16 wanted to find out who had salvaged the vessel. We
17 weren't there that period, so, given that his office
18 is directly adjacent to the -- to the wreck site,
19 generally, salvors will rebuild dive boats, et cetera.

20 And in an area like this, everybody kind of
21 knows each other, so it seemed like a good point of
22 contact to sort of say, well, you know, who came and
23 got it? Who came and got the boat? Unfortunately,
24 nobody did, so that kind of answered that.

↑

89

1 Q. Okay. Now, did you ever receive copies of
2 communications from Mr. Andersson to Concept that had
3 photographs of the things that came off the boat in
4 early January?

5 A. I don't believe so, no.

6 Q. Okay. Did you ever -- did any of them ever
7 give you any indication about what was going on with
8 the salvage before --

9 A. No.

10 Q. -- you made that call to Mr. Cottier?

11 A. No.

12 Q. Okay.

13 A. No. There had been a -- a few questions
14 raised as to whether or not we had retained the GPS,
15 which we had not. Other than that, you know, once --
16 once we've attended, you know, if an underwriter
17 doesn't request further work from us, you know, it's
18 not really our business. We kind of stay out of it.

19 Q. Okay. And -- and did you make any effort at
20 all -- you, not -- not anyone on your behalf, but that
21 you know of from your company, did anybody make any
22 effort to track down the GPS, other than your recent
23 communications with the divers?

24 A. No.

↑

90

1 Q. When were those communications with the
2 divers?

3 A. I'd have to go back and look. If you can
4 stay on for a minute, I can look right now if you'd
5 like.

6 Q. Okay.

7 A. (Deponent viewing computer.) That would've
8 been the beginning of May, this year. So May 2nd is
9 when I received the last e-mail from Alex Cottier.
10 That's -- and the 5th of February is the first one I
11 got.

12 Q. Did you speak with him or just communicate by
13 e-mail?

14 A. We just e-mailed. The -- the primary
15 language in the DOR, of course, is Spanish, and I
16 believe Mr. Cottier is mostly French. My French and
17 my Spanish aren't great. So being able to run things
18 through Google translator is somewhat beneficial for
19 us all. Obviously, there's a -- a written record
20 there as well.

21 Q. Did Mr. Cottier give you information about
22 who ultimately did the salvage?

23 A. He said that nobody came and did the salvage.
24 He actually sent me a picture of the wreck still on

↑

91

1 the -- or what's left of it, still on the breakwater.

2 Q. Does that --

3 A. I was a little -- go ahead.

4 Q. Does the wreck have a mast in the picture he

5 sent you?

6 A. I don't believe it does. Let me just scroll
7 back.

8 (Deponent viewing photograph.) No. It's --
9 well, I mean, not -- not upright, anyways. It's sort
10 of half at one hull and half of a bridge deck.

11 Q. Okay. And at this point, we were in COVID,
12 so you couldn't travel there, correct?

13 A. Correct.

14 Q. I'm going to move on in this process of going
15 through documents --

16 A. Sure.

17 Q. -- so we can get what we need done.

18 MS. NIEMEYER: So I'll stop sharing,
19 we'll go to the next -- hold on one sec. Close that
20 one.

21 MR. GOLDMAN: Michelle, I'm not --

22 MS. NIEMEYER: Yes.

23 MR. GOLDMAN: -- wanting to get in the
24 way, but, at some point, do you or anyone else want to

↑

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1 take a lunch break?

2 MS. NIEMEYER: I'd rather plow on for a
3 little longer.

4 MR. GOLDMAN: Fine with me.

5 MS. NIEMEYER: Why don't we go -- is --
6 is everybody okay with going another hour? Laurie, if
7 you need a short break, because I think, at least,
8 then I can get through significant stuff. I'd -- I'd
9 rather not take a lunch break if we don't have to.

10 MR. GOLDMAN: Fine by me.

11 (Off the record at 11:58 a.m.)

12 (Recess taken.)

13 (Back on the record at 12:03 p.m.)

14 MS. NIEMEYER: Okay. Let's go back on
15 the record.

16 BY MS. NIEMEYER:

17 Q. And I am going to share the next document
18 that was in the production that we received, which is
19 actually a video clip, and it has a Bates number
20 associated with it which is AB000266.

21 And can you see that?

22 A. (Deponent viewing video.) I can see that,
23 yes.

24 Q. I'm just going to play that for you so that

↑

93

1 you can -- Andrew, can you describe what that is?

2 A. (Deponent viewing video.) It's a video of
3 the breakwater and some of the fluxom [phonetic]

4 that's on it, as well as, I believe, that's the
5 vessel's dinghy. And now, we're looking at the deck
6 of the vessel that is sitting on top of the
7 breakwater.

8 Q. Is that a video that you took while you were
9 there?

10 A. Honestly, I can't remember, but it seems more
11 than likely that I would've taken that, yes.

12 Q. Did you have any video or other documents
13 that you utilized, like pictures, that you did not
14 take?

15 A. I don't believe so, no.

16 Q. Okay. So is it -- is it fair to say that
17 this document, which has been labeled as an AB
18 document, was provided by you and was maintained by
19 you in the ordinary course of business?

20 A. Yes, that's -- that's more than likely. I
21 have no objection to that.

22 Q. Okay. Now, let's go to the next one. Sorry.
23 It's a little clunky doing this with going from one to
24 another. I'm going to go from full to partial screen

↑

94

1 mode.

2 (Pause.)

3 BY MS. NIEMEYER:

4 Q. So, okay. Here's the next one, and this is a
5 one-page document with the Bates number AB000267.

6 A. (Deponent viewing document.) Yeah.

7 Q. It appears to be an e-mail from Mr. Andersson
8 to Samantha Thomas, Sarah Delacey-Simms and Andrew
9 Ball.

10 Mr. Ball --

11 A. (Inaudible.)

12 Q. -- do you recall this document?

13 MADAM COURT REPORTER: I'm sorry, I
14 couldn't hear what you said, Mr. Ball --

15 THE DEPONENT: Ahh --

16 MADAM COURT REPORTER: -- what you just
17 said while Michelle was --

18 THE DEPONENT: I --

19 MADAM COURT REPORTER: -- asking.

20 Can you please repeat it?

21 A. I --

22 Q. I was just asking Mr. --

23 A. -- I said --

24 Q. Okay. I'm going to start (laughs). I was

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1 just asking Mr. Ball if he recognizes this document.

2 A. (Deponent viewing document.) I do.

3 Q. Okay. And do you know what the video is
4 that's attached to this document?

5 A. Offhand, no. I would -- I would venture a
6 guess that it is from the video of the wreckage again.

7 Q. I can attempt to go through that link and we
8 can see what happens.

9 A. (Deponent viewing document.) Yeah, see
10 what's in there.

11 Q. It's an HTML connection. It doesn't seem to
12 be willing to show me anything.

13 A. (Deponent viewing document.) No, it -- it's
14 looking for something on the computer, so I think --

15 Q. Right.

16 A. -- it probably --

17 Q. I'm -- I'm not sure. That one -- you know,
18 it was -- it has a link embedded in an e-mail that was
19 produced to us, but I'm not sure what that is.

20 Is the e-mail itself something that you --
21 you would identify as having been produced in the
22 ordinary course of business?

23 A. Yes.

24 Q. Okay. I'm just going to go to the next one.

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1 That one is really not that important coming from you.

2 But I -- did you -- you received copies of

3 things sometimes from Mr. Andersson, I gather?

4 A. Yeah, I mean, with these claims, it's -- it's
5 generally -- it's generally a little bit here and
6 there with some people. They don't necessarily
7 understand what everybody's roles are. They're just a
8 -- you know, an insured that's had a bad day, and
9 they're trying to get information to everybody. So,
10 sometimes, we get copied into things that aren't for
11 us. Sometimes, other people get copied into things
12 that aren't for them.

13 Q. Okay. So I'm going to go to the next
14 document, which is in these documents that were
15 produced. This one is another video. It has a Bates
16 label associated AB000268. And let me just pop over
17 to the screen sharing again so we can get that one to
18 you.

19 Can you see this?

20 A. (Deponent viewing video.) I see it. This
21 looks like the same video, almost, as the last one.

22 Q. Okay. Yeah, they're -- they're very similar.

23 A. Yeah.

24 Q. It might even be a duplicate. They look very

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1 similar, but they were produced with different

2 numbers.

3 A. Okay.

4 Q. So is that also one that you recognize as
5 being kept in the ordinary course of business?

6 A. It is.

7 Q. And is it -- do -- do you believe you took
8 that video?

9 A. I -- I think it's fair to assume that I did,
10 yes.

11 MS. NIEMEYER: Okay. Now I'm going to go
12 to a grouping of documents. This is a -- a Bates
13 range of AB269 to 289.

14 THE DEPONENT: (Nods head.)

15 MS. NIEMEYER: Let me just get that
16 shared for you. Where'd it go? Sorry. Hold on. I
17 have to go back. I think I closed it by accident.

18 (Pause.)

19 MS. NIEMEYER: Okay. That's really
20 weird. It's open on my screen, and it should be
21 showing you what's open on my screen, but it isn't, so
22 give me one second to revitalize that.

23 BY MS. NIEMEYER:

24 Q. You're not looking at anything, right, except

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1 my face right now?

2 A. (Deponent viewing computer.) Correct.

3 Q. Okay. So -- let's give that another try.

4 (Pause.)

5 BY MS. NIEMEYER:

6 Q. Yeah, here it is. For some reason, it didn't
7 come up.

8 Can you see that now?

9 A. (Deponent viewing document.) Yes.

10 Q. Okay. So this is a document, it starts with
11 269 and ends with -- AB269, ends with AB289, I'm
12 leaving the zeros out, and it appears to be an e-mail
13 dated December 24th. Dear Martin, thank you for your
14 e-mail. Please contact Bill at Caribbean Marine
15 Surveyors for guidance. And if you go down a little
16 farther, it seems to follow a series of e-mails.

17 A. (Deponent nods head.)

18 Q. And my question to you here is, are you aware
19 of any conversations where Mr. Andersson communicated
20 with Mr. Bailey for guidance related to the claim?

21 A. Not specifically, but I -- I'm sure there was
22 some guidance that Bill would've given as to, you
23 know, what we should be doing to mitigate his loss and
24 act as a prudent uninsured. That's pretty standard

1 for us.

2 Q. All right. Now, you have worked for
3 Mr. Bailey for quite a while.

4 Do you know whether it was typically his
5 practice to provide written guidance, or did he do it
6 verbally, how did he -- then to provide his
7 information to the insured?

8 A. I think either/or. I'm sure there were a
9 number of phone conversations going on at that time,
10 and I vaguely remember that I had sort of said, you
11 know, it's Christmas, I had a Christmas dinner to
12 throw and sort of left it with Bill for a couple of
13 days. But I -- I don't -- I don't think he would
14 really choose one or the other. It would depend on
15 how the -- the communication came to him.

16 Q. Okay. Now, how did you -- how did your
17 company bill for your services?

18 A. We bill -- when we're away, we bill on a day
19 rate plus expenses, and then when we're here in the
20 office, we bill on an hourly rate.

21 Q. Is it Mr. Bailey's practice to provide his
22 hourly work for free?

23 A. To an extent, yes. His -- his work is seen
24 as an extension of the service that I'm providing.

1 It's -- let's say, it's somewhat rolled into the bill.

2 If he were to become heavily involved in the claim,

3 then he would start billing for his time.

4 Q. Okay. And -- and so was it your understand

5 -- now, let me just make sure we're clear on this.

6 So, if he was providing independent guidance to a

7 insured, that would be considered part of the work you

8 were doing as a surveyor?

9 A. Correct.

10 Q. Okay. And what -- what kind of a threshold

11 would you have to reach before Bill would start also

12 billing for his time?

13 A. That -- that really depends on the amount of

14 time that Bill was putting in. I think if he found

15 that the majority of his days were taken up with this,

16 or if he was providing, for instance, written reports,

17 then he'd start billing for his time.

18 But, of course, you know, we're -- we do --

19 we do list who the surveyor is on the invoice, but,

20 ultimately, we're billing for the company's time. And

21 our hourly rate does take into account work -- for

22 instance, if we're billing for me, our hourly rate

23 takes into account the work it would take for the

24 review process that we have in the office, all of the

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1 administrative processes, et cetera. So that would be
2 considered to be -- small -- small bits would be
3 considered to be somewhat included in our acc -- in
4 our billings already.

5 Does that sort of make sense?

6 Q. Sort of. Sort of. It's very fair, I have to
7 tell you. It's extremely fair.

8 A. (Deponent laughs.)

9 Q. It really is.

10 A. I was just told that.

11 Q. So, this particular document, I'm just going
12 to scroll through a little bit so you can see what's
13 here. So we have e-mails again. And in this e-mail
14 dated the 28th -- can you see that?

15 A. (Deponent viewing document.) Yes, it's a
16 little bit blurry, but I can read the content. Yeah.
17 I can read -- I can see Bill's e-mail there, yeah.

18 Q. Okay. So it -- it -- it documents here that
19 Mr. Bailey is saying that he spent some time, on the
20 24th, advising the insured of his responsibilities and
21 how he should act, prudent uninsured and exactly what
22 that meant, removal of wreck and disposal, et cetera.

23 A. (Deponent viewing document.) Yup.

24 Q. Did he have, like, standard information he

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1 would provide when he said those things?

2 A. In terms of, sort of, standard written
3 boilerplate, no. No. He would've -- he would've, you
4 know, advised as to what a standard marine policy
5 says, in terms of the insured's obligation to act as a
6 prudent uninsured. But, beyond that, no, there's
7 nothing, sort of, verbatim. There's no -- we don't
8 have, for instance, like a -- a PDF,
9 here's-how-you-handle-your-claim-type deal. That's
10 something that I think Concept has --

11 Q. Okay.

12 A. -- or Great Lakes.

13 Q. All right. Is there any kind of a claims
14 manual or any sort of documentation from Concept that
15 your company has that tells you how you're supposed to
16 do these things for Concept's claims?

17 A. Beyond -- beyond the one that's included -- I
18 think we -- we scrolled past it already, which -- it
19 came after the policy schedule, the one you previously
20 went through. It's just really written for an
21 insured, but it obviously guides us as to how to deal
22 with them as well, the claims guide that they sent
23 through here (indicating). I think we saw that in
24 both of the packs that you went through already

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1 (indicating).

2 Q. Okay. So there's not a separate document for
3 the surveyor that they provide to you?

4 A. No.

5 Q. Okay. I'm going to just continue to pass
6 through this, so just -- to make sure we're clear.

7 So this -- this is Sep -- September or -- I'm
8 sorry, December 28th, during --

9 A. Right.

10 Q. -- the time between Christmas and New Year's.

11 And -- and is it your understanding that,
12 during this entire time, Mr. Andersson has been
13 sitting in the Dominican Republic and attempting to
14 deal with the situation?

15 A. I believe so, yeah.

16 Q. Okay. I'm just going to pass through this,
17 because we're going to see these things in more
18 detail. But, again, I'm going to ask if you just
19 recognize these as part of the record that you --

20 A. (Deponent viewing document.) Yup.

21 Q. -- had in your office.

22 A. (Deponent viewing document.)

23 Q. Do you recognize these documents, or the

24 pages of this collection of documents, as e-mail

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1 communications that came from your office?

2 A. (Deponent viewing document.) Could you --

3 could you go back to the heading on this e-mail?

4 Q. (Attorney complied.) Yes.

5 A. (Deponent viewing document.) Okay. Yup.

6 Q. Okay. And this is another one.

7 A. (Deponent viewing document.) Yup.

8 Q. And -- and you see at the bottom of this one

9 where, on Page 286, Mr. Andersson asks, to you, when

10 he can expect his GPS unit to be returned, and you

11 responded and said you weren't in possession of the

12 unit, as it was never received from the salvors?

13 A. (Deponent viewing document.) Yes.

14 Q. Did you expect to receive it from the

15 salvors?

16 A. If we -- if we had been involved in

17 appointing salvors, then we would've requested that

18 they retain it and send it to us. But because the

19 underwriters never accepted the claim, we never moved

20 to a point where we would've helped him to appoint

21 salvors.

22 Q. Did you ever recommend to them that they

23 obtain the GPS as part of the claims investigation?

24 A. We did have that discussion on the beach,

↑

105

1 yes.

2 Q. That's not what I meant.

3 Did you have that discussion with -- not with
4 the salvors, but with someone at -- at Great Lakes or
5 at Concept?

6 A. We may not have had that discussion,
7 directly. That's something that we would normally
8 take the lead on anyways. I don't know. I can't say
9 definitively either way on that --

10 Q. Okay.

11 A. -- not for the purposes of the deposition.

12 Q. I'm -- I'm -- I'm a little confused here, and
13 I just -- I'd -- I'd like to clarify this, because you
14 explained to me before that it was your understanding
15 that a claims adjuster doesn't make a decision about
16 coverage, the underwriter does; is that correct?

17 A. Correct.

18 Q. Is it the adjuster's job, though, to provide
19 all the information necessary to the underwriter so
20 that they can make that decision?

21 A. Yes.

22 Q. And in this case, who do you consider the

23 underwriter to be?

24 A. Great Lakes -- well, sorry -- Concept Special

↑

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1 Risks.

2 Q. Okay. So -- and Concept Special Risks was
3 also the claims adjuster here, correct?

4 A. I believe so, yes.

5 Q. Who -- who was the claims adjuster?

6 A. I don't know. We submitted our reports to
7 Concept Special Risks as surveyors.

8 Q. Okay. And do you know who -- who you were
9 supposed to send that stuff to, at Concept?

10 A. It would've been either Sarah Delacey-Simms
11 or -- oh, I can't remember her name now, I'm sure
12 she's copied on a lot of those e-mails, but, Samantha
13 Thomas.

14 Q. Okay. Okay. And -- and to your
15 understanding, is Sarah Delacey-Simms a claims
16 adjuster at Concept?

17 A. I don't know.

18 Q. Okay.

19 A. She's our point of contact at Concept.

20 Q. Okay. So -- so, is it fair to say, you do
21 not know who the actual claims adjuster is within
22 Concept?

23 A. Correct.

24 Q. Okay. Did -- do you recall having any

↑

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1 conversation with anyone at Concept about the GPS?

2 A. Offhand, no. I'd have to go back to the -- I
3 mean, you have all of the e-mails in front of you, but
4 I'd have to go back through and read them again. This
5 was quite some time ago.

6 Q. Okay. And we'll do that. So I'm going to
7 get off of this document. You have confirmed that
8 this document is e-mails that were kept in the
9 ordinary course of business, and that's really what we
10 needed on this one, so let's move on.

11 A. Sure.

12 Q. I'm going to stop sharing that one, and let
13 me just close that baby down.

14 And we have another couple videos, so let me
15 just open this one real quick and back to, let's see.
16 Big screen. Start share. Video, optimize. Share.

17 Can you see this video?

18 A. (Deponent viewing video.) Yup.

19 Q. And, for the record, I'm going to --

20 A. I do.

21 Q. -- say this video has a Bates number of

22 AB000290, and I'll just play that a bit.

23 A. (Deponent viewing video.)

24 Q. Okay. Mr. Ball, do you recognize that video?

↑

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1 A. I do.

2 Q. Were you the photographer who took that
3 video?

4 A. I was, indeed.

5 Q. And was that also taken in the ordinary
6 course of business in your role as a surveyor?

7 A. It was, indeed.

8 Q. Okay. Can you tell us what it is?

9 A. (Deponent viewing video.) It's a video of
10 the interior of the starboard hull. Obviously, with
11 the -- the reef sticking out through the sole of the
12 vessel, Melody.

13 Q. Okay. And when you say "the starboard hull,"
14 was that -- that was in the below-decks cabin area,
15 correct?

16 A. Correct.

17 MS. NIEMEYER: Okay. I'm going to take
18 that one down, we'll move along here.

19 Let's see. Okay. The next collection here
20 is a large grouping of photographs. And, actually,
21 this might be the perfect time for a lunch break,

22 because it's several pages, and it's a good contextual
23 stop point.

24 Is everybody good with taking our lunch

↑

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1 break now?

2 MR. GOLDMAN: We're fine.

3 THE DEPONENT: Sure.

4 (Off the record at 12:26 p.m.)

5 (Recess taken.)

6 (Back on the record at 1:01 p.m.)

7 BY MS. NIEMEYER:

8 Q. Okay. So I believe we were -- we were about
9 to start talking about the collection of photographs.
10 And I'm just going to tell you for the record, the
11 Bates numbers in that collection of photographs start
12 with AB000291 and end with 351. Okay. And I'm just
13 now -- I'm getting to where I will share that screen.
14 Hold on.

15 (Pause.)

16 BY MS. NIEMEYER:

17 Q. Okay. Do we have Andrew back?

18 A. I'm here.

19 Q. Can you see the pictures?

20 A. (Deponent viewing photograph.) I can,

21 indeed.

22 Q. Okay. As we go through these, Andrew, I'm
23 going to ask you if you recognize these as pictures
24 you took while you were at Boca Chica doing the survey

↑

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1 on the boat, or if they were taken by you at some
2 other time or what you can tell me about them.

3 A. Sure.

4 Q. So why don't we start at this one. They came
5 as one big giant collection PDF to me.

6 A. I hope we didn't include any photos that
7 aren't relevant to the case (laughs).

8 Q. Nothing embarrassing.

9 A. Sometimes they end up in the wrong folder.

10 Q. Nothing embarrassing, if that's what you're
11 asking.

12 A. Good. Good.

13 (Laughter.)

14 BY MS. NIEMEYER:

15 Q. Can you describe what this --

16 A. (Deponent viewing photograph.) So this
17 photo --

18 Q. -- is?

19 A. (Deponent viewing photograph.) So this photo
20 was taken from the beach. I'd have to look at the

21 time stamp on the metadata, but I'm pretty sure this
22 was in the morning where I was about to go and start
23 to get ready to look at the wreck. It looked more
24 like sunset -- sunrise than sunset.

↑

111

1 Anyways, this is from -- from the beach.
2 Looking over, you can just see the -- the mast, the --
3 the furthest mast to the left is the -- the wreck of
4 Melody sitting on the -- on the breakwater. And it
5 gives a little bit of a context, it's kind of a
6 diagonal look, I suppose, but of the distance between
7 the breakwater and the shore. And you can kind of see
8 how flat the water is on this side of the breakwater
9 versus out to sea.

10 Q. Okay. So I'm -- I'm --

11 A. That was where --

12 Q. -- going to just ask --

13 A. -- your mouse --

14 MADAM COURT REPORTER: I'm sorry.

15 BY MS. NIEMEYER:

16 Q. -- that you --

17 MADAM COURT REPORTER: Hold on one

18 moment. I didn't hear what he said.

19 You said something after Michelle said okay,

20 so I'm. I couldn't hear you, sir.

21 THE DEPONENT: That was -- I -- I -- I
22 said that's it, where your mouse is. Michelle had her
23 house over the wreck.
24

↑

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1 BY MS. NIEMEYER:
2 Q. Oh, okay. Is it here (indicating)?
3 A. (Deponent viewing photograph.) Correct.
4 Q. Okay. So it's very -- it's -- it's distant
5 in this picture, correct? And it appears as if there
6 might be like a wharf or some kind of pier in between
7 where you took the picture from and the boat you see
8 on the horizon in the background that you've
9 identified as Melody; is that correct?
10 A. (Deponent viewing photograph.) Correct.
11 And, I think, as we get further down through the
12 photos, they'll be some that are sort of more
13 perpendicular to the wreck site which will show a
14 little bit of a closer distance that this photo
15 represents --
16 Q. Okay.
17 A. -- from the shore on the other side of the
18 pier.
19 Q. So you said this was taken in the morning.

20 It looks like very early.

21 Do you -- do you have any recollection of the
22 timeline of your visit to that area?

23 A. Not directly. I think I probably -- I'd have
24 to look back at the plane tickets, which, I think, are

↑

113

1 in that pack of documents.

2 Q. Okay.

3 A. I remember I had a little troubling getting
4 there. I think I had a flight that got canceled or
5 delayed, which is not uncommon with regional carriers
6 in the Caribbean. And I remember that we started very
7 early the day that we went to look at the wreck. I
8 vaguely remember walking down the beach and thinking,
9 oh, man, it's early, it's cold, I'm not excited to get
10 in the water.

11 (Laughter.)

12 BY MS. NIEMEYER:

13 Q. Okay. Okay. So I'm going to just scroll
14 through here and -- so, I see here, we're no longer
15 seeing that -- that pier in between us and the boat.

16 Is this as -- did you walk along the beach to
17 get there?

18 A. (Deponent viewing photograph.) Correct. So

19 I'm -- I'm a bit photo happy, generally speaking. So,
20 as I walked along the beach, I took various pictures
21 of the wreck as I got closer to it.

22 And I -- I -- I can see in this photo that it
23 seems to be a bit brighter, so I -- I'm going to
24 suggest that these photos are likely in chronological

↑

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1 order, and they were taken in the morning.

2 Q. Okay. So I'm just going to just keep moving
3 on.

4 So, this one; when was this taken, do you
5 think?

6 A. (Deponent viewing photograph.) The same
7 time, and this would've shown it to be -- this
8 would've been pretty perpendicular to it. I think
9 what we can see in the middle there, is actually
10 Saragassum seaweed, not a shoreline.

11 Q. Okay.

12 A. (Deponent viewing photograph.) You can see
13 the, sort of, line in the photo.

14 Q. Mm-hmm. You mean just past the swimmers?

15 A. (Deponent viewing photograph.) Correct.

16 Q. And is -- are those sticks in the water
17 between the shoreline and where you see the boat?

18 A. (Deponent viewing photograph.) So they're on

19 -- they're on the -- the shoreline side of the
20 breakwater, and it looks -- if I remember correctly,
21 it's a mangrove nursery. So you see this a lot out
22 here, you'll see bits of PVC pipe, basically, plugged
23 into the reef and sticking out of the surface. And
24 it's a -- it's a safe environment so that mangroves

↑

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1 can grow. And then they will stabilize the seabed --

2 Q. Okay. Okay.

3 A. -- because it's -- it's sort of them getting
4 the bottom to stop from shifting.

5 Q. Interesting. All right. So those are not --
6 they're not intended to be any kind of navigational
7 marker?

8 A. (Deponent viewing photograph.) No, what --
9 what you can see on the left side of the picture, sort
10 of above the Saragassum seaweed, but below the
11 horizon, I believe, is one of the inshore markers, or
12 it might be a swim buoy. So, along this beach, there
13 are a number of, sort of, resorts and hotels, and
14 there's various water sports that was coming out of
15 those hotels. Of course, there's a swim area as well.
16 So it -- it -- it serves to keep everybody
17 separate and probably provide a -- a deep-water mark

18 for some boats transiting inside the breakwater.

19 Q. Okay. So I'm going to go on.

20 A. Sure.

21 Q. So this is another -- it looks like that

22 farther view again.

23 A. (Deponent viewing photograph.) Yup.

24 Q. Does this tell you maybe those weren't

↑

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1 chronological?

2 A. (Deponent viewing photograph.) Yeah, it
3 tells me that this one definitely isn't chronological
4 with the rest.

5 Q. Okay. And what is this?

6 A. (Deponent viewing photograph.) This, again,
7 is -- I can't really zoom in here. I think we might
8 find --

9 Q. Oh, I might be able to zoom in.

10 A. (Deponent viewing photograph.) Sure, a
11 little bit. So this is --

12 Q. Is that better?

13 A. (Deponent viewing photograph.) Yeah. So
14 this is looking to the left of the wreck site. The
15 left would've been off the right-hand side of the
16 photo. I'm not quite sure what I was taking a photo
17 of there. Maybe just a nice sunset.

18 Q. Okay. And, again -- so this -- are we
19 looking -- we're looking east where the sun is coming
20 up; is that correct?

21 A. (Deponent viewing photograph.) I believe so,
22 yes, because this is a south-facing shore.

23 Q. Okay. And I'm just going to get to that --
24 I'd like you to see the whole picture if you can.

↑

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1 Can you see the whole picture?

2 A. (Deponent viewing photograph.) Yeah, I can
3 see the whole picture. I'm a little curious as to why
4 I took this. I'm pretty sure the wreck site is off to
5 the right, outside of the frame.

6 Q. Okay.

7 A. (Deponent viewing photograph.) It may have
8 been to show the entrance to the breakwater which
9 would've been right about where the sun is. There
10 was, sort of, an entrance at each end, depending on
11 the draft of the vessel.

12 So I think the other thing that I was
13 probably trying to -- trying to document, and it
14 would've been better from -- from the breakwater, my
15 -- my mind was sort of going through, well, how -- how
16 do you not see this breakwater? It's -- it's -- it's

17 very low to the surface, yes, but when you're
18 approaching in the dark, all of these resorts, hotels,
19 bars, et cetera, have lots of lights on them, and the
20 sea is very flat on the inside of the breakwater,
21 which, obviously, makes it quite highly reflective.

22 And my -- my thought would be that, you know,
23 if I was approaching in rough weather in the dark, I'd
24 be a little bit curious about why the sea I was in was

↑

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1 so rough and why the sea not so far away was so flat,
2 unless something was in between.

3 Q. Now, were you actually there at night?

4 A. Yes, I was.

5 Q. And when you were there at night, did you go
6 out to where the boat was?

7 A. No. I -- I didn't go swimming in the dark.

8 Q. Did you ever go on a boat beyond the
9 breakwater to see what it looked like out there?

10 A. Well, I mean, I went to the breakwater and
11 saw the other side of the breakwater while I was on
12 it, but not in the dark.

13 Q. Okay. But while you were on it, you didn't
14 go out in a boat beyond it?

15 A. No. No. No.

16 Q. Okay.

17 A. No.

18 Q. I'm going to go to the next one here.

19 So the -- the breakwater was very long,
20 correct?

21 A. (Deponent viewing photograph.) It is. It's
22 very long, and it's not very tall.

23 Q. And are you aware of how that breakwater is
24 in relation to the tides, as in a high tide, is it --

↑

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1 is it submerged?

2 A. It was very low to the water so, it -- I
3 mean, it depends which day of high tide, but I could
4 see how, on a spring tide, it certainly would be
5 submerged, but it would also be awash in any kind of
6 weather.

7 So, I mean, when I was out there, the highest
8 point was probably a foot or two above sea level. And
9 in the Caribbean, we don't have a whole lot of tidal
10 variance. And so, you know, I mean, I could see how,
11 on a high spring tide, it must be mostly submerged,
12 but, at the same time, with any kind of a sea state
13 other than, you know, flat mirror calm, it's going to
14 be awash. You're going to have breaking -- breaking
15 water there.

16 Q. All right. Let me go to the next one here.

17 So you're getting a gorgeous -- I have to tell you,

18 you're a very good photographer. Gorgeous sunrise

19 picture here.

20 I'm assuming that's also the sunrise,

21 correct?

22 A. Correct.

23 Q. Okay. Same thing, now you're by the little

24 boat we kept seeing it in the pictures.

↑

120

1 Are -- is this also to the left of the area

2 where the boat was on the breakwater?

3 A. (Deponent viewing photograph.) It is. So

4 the wreck would've been probably just a bit to the

5 right of where your mouse is.

6 Q. Okay.

7 A. (Deponent viewing photograph.) But I think,

8 actually, what you see in the foreground of this

9 photo, you can't -- you can't really see it very well,

10 but that sign that you see, it has a diver flag on it.

11 It's got -- it's got -- it's a red sign with a white

12 slash through the middle (indicating), and I believe

13 what I was trying to do here was document the location

14 of the dive shop, which is Alex Cottier's dive shop.

15 Q. Okay. Was he involved, in some way, with

16 your inspection?

17 A. No, he was not.

18 Q. So why -- why did you document his dive shop?

19 A. Because when salvors arrive, they will
20 generally use the services of a local dive shop to
21 refill their tanks. So we generally try and make a
22 note of anybody around that might be of use to us if
23 we need additional information, and this would be
24 somebody that is, you know, directly there. And

↑

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1 divers are easy to look up because they're generally
2 all PADI registered.

3 Q. Okay. I -- I was curious to know if you were
4 aware, at that point in time, that Mr. Cottier was the
5 person who helped Mr. Andersson get off the boat after
6 it went aground.

7 A. I think he did say that in his statement, but
8 I don't think I ever interviewed with Cottier about
9 it.

10 Q. Okay.

11 A. And, of course, this was morning. I hadn't
12 actually met Mr. Andersson at the time of taking these
13 photos.

14 Q. Okay. Okay. All right. So I'm going to

15 move on.

16 Another picture, essentially the same area,

17 correct?

18 A. (Deponent viewing photograph.) Correct. And

19 it --

20 Q. Okay.

21 A. -- it shows a -- a small dock on the left

22 there, which is part of a resort.

23 Q. Okay. And that would've been to the left of

24 where the boat was?

↑

122

1 A. (Deponent viewing photograph.) Correct.

2 Q. Okay. And this, it looks like, is roughly

3 the same with a different exposure?

4 A. (Deponent viewing photograph.) Correct.

5 Q. And, again --

6 A. I know --

7 Q. -- is this now -- do you play with exposure

8 because you're having fun being a photographer or

9 is --

10 A. (Deponent viewing photograph.) Well --

11 Q. -- is this chronological and no different?

12 A. No, this is chronological and no different.

13 I think the camera probably plays with automatic

14 exposure, but I'm -- I'm not that -- I'm not that

15 camera happy.

16 Q. Okay. So some -- something knocked down
17 your -- your exposure if --

18 A. Yes.

19 Q. -- if it's chronological.

20 That was, kind of, my badly-stated question
21 was, it appears as if these are backwards, if this is
22 the sunrise --

23 A. Yes. Yes.

24 Q. -- and where it -- so we have confirmed this

↑

123

1 is a sunrise, not a sunset photo, and you believe
2 they're chronological, there may have been some sort
3 of automatic change in the exposure on the camera?

4 A. Correct.

5 Q. What kind of camera do you use?

6 A. In this case, it would've been a -- probably
7 -- I've got a couple of them, but either an Olympus or
8 it's probably my Nikon. It's just a little
9 submersible point-and-shoot (indicating).

10 Q. Okay.

11 A. I knew I had to swim out, so I didn't want to
12 take anything that couldn't get wet.

13 Q. All right. And here we have -- let's just

14 confirm for the record, what is this picture?

15 A. (Deponent viewing photograph.) This is
16 Melody, stranded on the breakwater, and I think this
17 photo was likely taken over my head as we were wading
18 out. Because it looks a lot closer to the vessel than
19 the shoreline would have been.

20 Q. And it appears as if there are waves breaking
21 on the far side of the breakwater, correct?

22 A. (Deponent viewing photograph.) Correct. She
23 was -- she was getting picked up and dropped down
24 again on the reef. So she was moving while we were on

↑

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1 board.

2 Q. It hurts to see that.

3 Okay. Closer picture of Melody, correct?

4 A. (Deponent viewing photograph.) Correct. And
5 you can, sort of, see the height of the breakwater
6 above the water in that photo.

7 Q. And just to confirm, you're not sure what the
8 tide was at the time when you took these photos,
9 right?

10 A. Correct.

11 Q. Okay.

12 A. We could -- we could go back and look.
13 That's not that difficult to do, but I'm not sure what

14 it was at that particular time, no.

15 Q. Okay. Now, it appears this is another -- it
16 looks like it got rougher.

17 Is it possible you took this after you were
18 leaving or --

19 A. (Deponent viewing photograph.) This would've
20 been at the same time, but waves do come in sets.

21 Q. Okay.

22 A. (Deponent viewing photograph.) Not every
23 wave is the same height, and so I -- it's likely why I
24 took this picture.

↑

125

1 One of the hardest things that we find to
2 document, especially for underwriters, is -- is the
3 conditions of the sea, because it generally looks a
4 lot -- a lot nicer than it actually is. It's kind of
5 hard to get a photo that really shows the destructive
6 power of a wave, which is one of the reasons that we
7 use some video as well.

8 The video is harder to transmit, but
9 sometimes it's the only way that he can really capture
10 the -- the severity of the situation.

11 Q. Would you consider this to be a severe
12 situation?

13 A. Given the position of the vessel, yes. I
14 mean, once a boat is -- is awash like this, aground,
15 it's going to sit there and bounce up and down until
16 it breaks apart. So time is of the essence in terms
17 of saving the asset, and, obviously, by -- by the time
18 we got out there, it had been out there for quite a
19 while, because we had had time to travel to the DR.

20 But in terms of making -- making a
21 recommendation towards, you know, to salve it or -- or
22 just remove the wreck and do a -- a less surgical
23 operation for cheaper, you know, part of that is, how
24 much time do we have and how much damage is already

↑

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1 done.

2 Q. Okay. Would you say that, in the position
3 you see the boat in now, and -- and the kind of wave
4 action et cetera, was -- was there water entering the
5 cockpit area and affecting things there?

6 A. (Deponent viewing photograph.) Yes. So, at
7 this point, we'll get to the photos as far as what we
8 had determined the condition to be when I got on
9 board, but, you know, I've looked enough of these
10 that, when I got to this point, you know, both hulls
11 -- both hulls are whole. She would've been bounced up
12 there pretty hard.

13 And so the interior of both sides would have
14 been -- I mean, one's obviously high and dry, but
15 would've been compromised, and there would've been an
16 opportunity for water to get in there. And with her
17 stern to the sea, or, at least, partially to the sea
18 like this, there was plenty of water, sort of, getting
19 sprayed and washed into the cockpit as well.

20 Q. Let's go on.

21 A. I actually ended up erecting some -- some
22 tarpaulins for the security guys that were sleeping on
23 board.

24 Q. Okay. So now we have -- it looks like --

↑

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1 A. (Deponent viewing photograph.) That's --

2 Q. -- is this the dinghy that was associated
3 with the boat?

4 A. (Deponent viewing photograph.) Yeah. And
5 I'm not -- I'm -- I'm not positive how it -- exactly
6 it got launched and got to there on the inside of the
7 breakwater. But, obviously, that was a -- a pretty
8 good place to put it, in terms of salving its value
9 and keeping it safe. So I imagine I took this picture
10 just in terms of, you know, showing that the dingy was
11 intact and not lost.

12 Q. Okay. Now, let's go, another photo of the
13 dinghy.

14 And --

15 A. (Deponent viewing photograph.) Yeah, the
16 outboard --

17 Q. -- was this the document that the outboard
18 was there and its condition (indicating)?

19 A. (Deponent viewing photograph.) Correct.
20 Yeah, just to show --

21 Q. Okay.

22 A. -- that it was present.

23 MADAM COURT REPORTER: I'm sorry, just to
24 show that it was, I couldn't hear the last word, sir.

↑ 128

1 THE DEPONENT: Just to show that it was
2 present.

3 MADAM COURT REPORTER: Thank you.

4 A. (Deponent viewing photograph.) And then, of
5 course -- and then, of course, this is a -- a photo of
6 the serial number, just to show which -- which
7 outboard we're speaking about.

8 Q. Okay. And what is this?

9 A. (Deponent viewing photograph.) This is the
10 hull identification number on the dinghy. So every --

11 Q. Okay.

12 A. -- every boat, theoretically, under -- under
13 convention, is given a specific number. You know, the
14 first -- the first letters account for the builder of
15 the boat, the last four characters count for the --
16 the build date and the model year. It's a bit like a
17 VIN number for a car.

18 Q. Okay. So let's see. Another picture, it
19 looks like you took this from when you were standing
20 by the dinghy.

21 A. (Deponent viewing photograph.) Yeah.

22 Q. Okay. And another --

23 A. (Deponent viewing photograph.) I think -- I
24 think this -- this photo served two purposes for me.

↑

129

1 One was to show that the anchor was -- had been
2 dropped, or, at least, partially. It's been -- it
3 looks like it's been recovered on the deck, actually,
4 and the chain's in the water, but somebody probably
5 tried to use it to get the boat off the reef.

6 The other, which is a little bit harder to
7 see, if you see where the wooden ladder, the makeshift
8 ladder is alongside --

9 Q. Mm-hmm.

10 A. -- there's actually a big deformity in the

11 hull there, in the top side.

12 Q. Okay.

13 A. (Deponent viewing photograph.) And that was
14 to show, you know, the beginning of some -- some
15 structural breakdown, a lot of delamination on the top
16 sides, just to quantify some of the -- the damages
17 beyond the hulls.

18 Q. Okay. And let's go on to the next one.

19 So what are you showing us here?

20 A. (Deponent viewing photograph.) That would be
21 more of the anchor chain, which is in the water, but
22 you can see that the anchor is up on the trampoline.

23 (Technical difficulties.)

24 A. Do you see --

↑

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1 Q. Okay.

2 A. -- how the chain wraps over --

3 MADAM COURT REPORTER: Excuse me. That

4 --

5 BY MS. NIEMEYER:

6 Q. Yes.

7 MADAM COURT REPORTER: -- that -- that --

8 I didn't hear --

9 BY MS. NIEMEYER:

10 Q. And --

11 MADAM COURT REPORTER: Excuse me. You
12 froze when you said, but you can see that the anchor
13 is up on the -- I couldn't hear the next word.

14 (Technical difficulties.)

15 THE DEPONENT: On the trampoline.

16 MADAM COURT REPORTER: Trampoline. Okay.

17 THE DEPONENT: The trampoline, like --
18 like the one that children --

19 (Technical difficulties.)

20 MADAM COURT REPORTER: Thank you.

21 BY MS. NIEMEYER:

22 Q. Okay. And -- and here, you can see there's,
23 actually, it looks like the breakwater is partially
24 submerged in this area (indicating), correct?

↑

131

1 A. (Deponent viewing photograph.) Correct. So
2 the -- the port hull, the one on the left side, the
3 one closest to us, had been washed up high -- we call
4 it high and dry. It was -- it was on the -- above the
5 water level on the shore.

6 The starboard hull was awash. So when we
7 were on board, it still had a little bit of buoyancy
8 in it. It was -- it was mostly full of water, but, of
9 course, every time a wave would hit the boat, the

10 whole boat would move.

11 And so what you see -- if you see, on this
12 photo, there's a -- a blue stripe just above the water
13 line --

14 Q. Yeah.

15 A. -- that indicates that -- that the front end
16 of this hull is at about the same height that it would
17 be if the vessel was afloat. What you can't see in
18 this photo is that the reef is actually inside the
19 boat as well, so it's, clearly, not fully afloat --

20 Q. Okay.

21 A. -- but it hasn't -- it hasn't lost any
22 altitude, I guess.

23 Q. Okay. And this one (indicating)?

24 A. (Deponent viewing photograph.) This was --

↑

132

1 this just shows a little bit more of the inside of the
2 starboard hull. The photo doesn't show it very well,
3 but the intent was to show where the reef is and how
4 shallow it is all the way along that hull.

5 You know, one of the things that we think
6 about in terms of the possibilities for salvage is,
7 obviously, just how -- just how complex and how
8 difficult it is, and that's about how much -- how much
9 water you have to work with. You know, is it just the

10 bow that's aground? Is it the whole boat? Is it both
11 hulls?

12 You know, had -- had this boat not been
13 significantly damaged enough that we would recommend
14 it as a -- a constructive total loss, it would've been
15 the kind of job that we would probably look to, for
16 instance, use a crane to save the vessel rather than
17 drag it off the reef, because, of course, the hull's
18 in the bottom. If you drag it off, it takes on more
19 water, you have more damage.

20 Q. Okay. And this is just -- for the record,
21 we're looking at Number 313 right now. So let's go on
22 to 314.

23 It looks like this is just a closer-up
24 version of the picture of the starboard hull, correct?

↑ 133

1 A. (Deponent viewing photograph.) Indeed. And
2 you can see just -- or to the right of the escape
3 patch that you can see in the middle of the photo
4 there, I think you can actually see where a -- part of
5 the reef has broken the water line.

6 You see where the blue stripe is interrupted?

7 Q. Yes.

8 A. (Deponent viewing photograph.) So, again,

9 that sort of shows just how far up the damages have
10 come.

11 Q. Okay. And 315 --

12 A. (Deponent viewing photograph.) No, this
13 photo -- go ahead.

14 Q. Is this still the starboard, or is this the
15 port hull?

16 A. (Deponent viewing photograph.) This would be
17 -- I believe this is -- no, this is the port hull. So
18 what you see on the top left of the photo is the
19 anchor chain roller --

20 Q. Mm-hmm.

21 A. -- and below you see the wave breaker on the
22 bow.

23 To the right side of the photo, you see the
24 escape hatch that would've been on the port hull. So

↑ 134

1 it's probably fairly obvious, but for the sake of the
2 record, what I'm trying to show here is the --
3 probably 10-foot-long by three-foot-tall flap of
4 fiberglass that has been ripped out of the hull skin
5 there, by the reef.

6 Q. Okay.

7 A. (Deponent viewing photograph.) Do you see
8 that in the middle of the photo --

9 Q. Yes.

10 A. -- it's laid out?

11 Q. Yes. Okay. And 316, it appears, is just a
12 slightly farther-away version of that similar
13 viewpoint, correct?

14 A. (Deponent viewing photograph.) Correct.

15 Q. Okay. 317, what is this?

16 A. (Deponent viewing photograph.) This is a --
17 this is a closer-up version of the starboard hull, the
18 photo that we -- we were just talking about where the
19 water line was broken.

20 Q. Oh, okay.

21 A. This is a close-up photo.

22 (Technical difficulties.)

23 MADAM COURT REPORTER: I'm sorry, this
24 was a what? I couldn't hear.

↑

135

1 A. (Deponent viewing photograph.) This is a
2 close-up photo of the starboard hull, and it's in the
3 area that we -- we referenced in the previous photos
4 of the starboard hull where the water line has been
5 broken.

6 Q. And 318, is this the portside again?

7 A. (Deponent viewing photograph.) That's,

8 again, the portside. I -- I think what I was doing
9 here was, sort of, slowly waddling my way back
10 underneath the boat and trying to snap as many
11 pictures as I could before another wave came. It
12 wasn't long after this that I got a sea urchin in my
13 leg.

14 Q. Oh, ouch.

15 A. (Deponent laughs.)

16 Q. 319, is that --

17 A. (Deponent viewing photograph.) That's
18 that --

19 Q. -- that same place on the starboard hull, but
20 closer to it?

21 A. (Deponent viewing photograph.) It is,
22 indeed.

23 Q. And 320, is -- it appears to be that flap of
24 the port hull again; is that correct?

↑

136

1 A. (Deponent viewing photograph.) Correct.

2 Q. And -- and -- and it looks like, now, you're
3 -- you're under the solid part of this -- which is
4 probably the salon walking through -- between the two
5 pontoons, correct?

6 A. (Deponent viewing photograph.) Almost. What
7 you see at the top of the photo, see the -- the rust

8 streaks coming down?

9 Q. Sort of --

10 A. (Deponent viewing photograph.) On -- on the
11 top left there you can see about four brown lines that
12 are working down --

13 Q. Mm-hmm.

14 A. -- right above your mouse. So that would --
15 that would likely have been from a fitting at the aft
16 end of the trampoline. So it would've been right at
17 the front of the salon. So that area, more than
18 likely, would be a storage locker.

19 Q. Okay. Now -- now, we're back outside.

20 Where are we here?

21 A. (Deponent viewing photograph.) This is
22 looking down the outboard side of the starboard hull,
23 and this, sort of, shows the wave action coming in.

24 Q. Okay. So this is the outside of the boat

↑

137

1 closest to the ocean, not closest to the breakwater,
2 correct?

3 A. (Deponent viewing photograph.) Correct.

4 MS. NIEMEYER: And -- and, for the
5 record, this is 321.

6 BY MS. NIEMEYER:

7 Q. 322 appears to be similar, but the wave has
8 gotten closer?

9 A. (Deponent viewing photograph.) Yup. Just
10 documenting the force of the wave.

11 Q. Do we get to see you be hit by this, because
12 it looks like you're going to be.

13 Let's see, here we go. 323. So, is this a
14 good description of the just -- at least the -- that
15 morning you were there, what kind of wave action was
16 hitting the exterior of the vessel?

17 A. (Deponent viewing photograph.) Correct. And
18 -- and so, you know, we talked a little bit earlier
19 about, you know, how much water weighs and just --

20 Q. Okay.

21 A. -- the amount of force behind water. I think
22 this picture kind of sums it up.

23 Q. And this is 323.

24 Were you -- are you aware if -- was this kind

↑

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1 of the normal weather conditions in the Dominican at
2 that time of year? Was it more rough, less rough? Do
3 you have any idea?

4 A. I would say that this was a particularly flat
5 day, actually. The -- the South Shores of the -- of
6 the Caribbean are generally a little bit more

7 protected. The big swells that we have in the winter
8 season generally come out of the north, and they're
9 generated by weather further north. So this is on the
10 south side of the island, and it's protected from a
11 lot of swell. But, still, in -- in regards to the
12 open ocean, I would say that this is a -- a reasonably
13 calm day.

14 Q. Okay. Let's go to 324.

15 A. We have a -- we have a phenomenon -- it's not
16 really a phenomenon, but it's a -- a weather pattern
17 that comes through around Christmas that we call the
18 Christmas winds. And so the weather does generally
19 come up around Christmas, sort of, you know, some
20 years, it's a little bit earlier than others, but late
21 December, early January, it gets particularly windy.

22 Q. Okay. So we were right around that time
23 frame, correct, in this situation?

24 A. Yeah.

↑

139

1 Q. Okay. So, this next picture, 324, just to
2 clar -- I'm going to be quick here and say that I
3 believe, and I'll ask you to confirm; this is, again,
4 the portside of the boat where that one ladder was?

5 A. (Deponent viewing photograph.) Correct. And

6 it -- it shows the deformity -- I mean, that -- that
7 should be a nice contiguous curve all the way through.
8 You can, sort of, see how the side of the boat has
9 been indented there as it comes ashore.

10 Q. Right. It -- it appears as if it's caved in
11 a bit there.

12 A. (Deponent viewing photograph.) Correct.

13 Q. Okay.

14 A. (Deponent viewing photograph.) And, of
15 course, the delamination of the fiberglass radiating
16 around it as well.

17 Q. Now -- okay. And here's another photo,
18 essentially, of that same area, correct?

19 A. (Deponent viewing photograph.) Correct.

20 Q. Okay. 326 --

21 A. (Deponent viewing photograph.) That would be
22 --

23 Q. -- that --

24 A. (Deponent viewing photograph.) That would be

↑

140

1 Mr. Andersson.

2 Q. I couldn't hear you.

3 A. (Deponent viewing photograph.) I said, that
4 would be Mr. Andersson running his hand along the
5 deformity --

6 Q. Okay.

7 A. -- on the portside.

8 Q. Okay. Now, Mr. Andersson was there with you
9 when you did this inspection.

10 Was anybody else there with you?

11 A. Yes, there were a number of -- of men
12 sleeping in the salon when we got there, and they were
13 the security guards that Mr. Andersson had appointed,
14 instructed.

15 Q. Okay. And this Picture 327, what is this?

16 A. (Deponent viewing photograph.) So this is
17 the stern of the boat, or the two sterns, if you like.
18 The closest to us is the portside, and it -- it
19 doesn't really show the wave action. I think there
20 might be some further photos that do, but, obviously,
21 I'm -- I'm standing on the bottom when I take this
22 picture, so it gives an idea of depth.

23 Q. Okay. 328. And it appears, at this point,
24 you've gotten water on your camera lens; is that

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1 correct?

2 A. (Deponent viewing photograph.) That's
3 correct. So I took this photo with purpose. The --
4 the yellow flag that you see there is a lot better

5 known to people now that we've had COVID; it's the
6 quarantine flag. So it's the flag that you fly when
7 you enter a new country before you have cleared
8 customs. So that was my way of reminding myself that
9 the vessel likely hasn't cleared customs yet.

10 Q. Okay. What's the relevance of that?

11 A. If we had moved towards salvage, the -- the
12 vessel would've had to be cleared at -- well, it
13 should be cleared in anyways, in fact, and, obviously,
14 Mr. Andersson's immigration status would be relevant
15 to that as well, just in terms of the -- the, sort of,
16 legality of -- of the boat and it being there and how
17 that works. Obviously, he didn't get a chance to
18 clear customs.

19 Q. Okay. Do you know if he did actually clear
20 customs?

21 A. I don't, no.

22 Q. Okay.

23 A. My -- my experience with Caribbean nations is
24 that there -- there is a lot of officialdom. And

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1 given that he reported that the authorities had
2 already been involved and were wondering about, you
3 know, how they were going to take care of the wreck,
4 I'm sure somebody would've asked questions about his

5 immigration status.

6 Q. Okay. Now, 329 appears to be taken on the
7 deck of the port pontoon; is that correct?

8 A. (Deponent viewing photograph.) Correct. So
9 this is -- this is on the portside on the side deck
10 looking forward.

11 Q. Is there anything of note there that we
12 should know about?

13 A. (Deponent viewing photograph.) I think the
14 intent of this photo was really just to show that it
15 was slightly bow up on the portside, that, you know,
16 the bow was further up the breakwater than the stern.
17 And, specifically, just to document the vessel's
18 position in relation to the breakwater. It doesn't
19 always tell us, but it often tells us a little bit
20 about how the vessel hit the breakwater.

21 So it would be the difference of, you know,
22 did you drag anchor and -- and float backwards into
23 the breakwater? Did you drive forwards over the
24 breakwater? You know, sort of what -- what happened,

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1 what is -- what does the evidence tell us.

2 Q. Okay. And, presumably, however you've hit
3 it, if there's wave action, that would affect it, too,

4 correct?

5 A. Correct.

6 Q. Did you come --

7 A. And so, you --

8 Q. -- up with --

9 A. -- know -- go ahead.

10 Q. Were there any conclusions that you came up
11 with based on this?

12 A. There -- there weren't any conclusions, but
13 it contradicted Mr. Andersson's statement. You know,
14 if -- if he were -- hypothetically, if he were to say,
15 you know, I -- I dragged anchor and hit it, but,
16 meanwhile, he ran over it straightforward, then we
17 would start asking some more questions. But in this
18 case, you know, he said, you know, I -- I drove into a
19 breakwater. I'm not going to argue with that.

20 Q. Okay. 330. It appears to be taken from the
21 bow on the portside looking back; is that correct?

22 A. (Deponent viewing photograph.) That's
23 correct. And you can see that there's --

24 Q. Again, is there anything -- is there anything

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1 you take from this or any relevance to this photo to
2 you?

3 A. (Deponent viewing photograph.) Yes, the wave

4 action on the starboard side there. You can -- you
5 can see the height and the breaking wave coming at the
6 vessel.

7 Q. Okay. Now, let's go to 331.

8 And can you describe what this picture is of?

9 A. (Deponent viewing photograph.) So this is
10 looking around the starboard bow from -- from the
11 deck, through the trampoline, down at the reef. And
12 it just shows, again, you see, on the left side of the
13 photo, how the water is -- is breaking? It's not
14 really a raised wave, but it's breaking. It's
15 disturbed water.

16 And so this -- this speaks a little bit to
17 the -- the visibility of the breakwater, even in the
18 dark. I'm sure you're coming to that, so I'll leave
19 that.

20 Q. I -- I want to ask you, and I'm just going to
21 -- we've been using a lot of nautical terms that, to
22 you and I may not seem nautical, but, just to clarify,
23 when we say "bow," we mean the front of the boat,
24 correct?

↑

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1 A. Correct.

2 Q. And this -- where you see this white bar that

3 runs through the center of the picture, and it -- it
4 touches part of the boat, is that the -- that's a
5 structural piece of the boat that holds the two
6 pontoons together, all the way at the front of the
7 boat, correct?

8 A. (Deponent viewing photograph.) Yes, it's the
9 forward crossbeam. It -- it functions more in terms
10 of the rigging than reinforcing the hulls. It does
11 reinforce the hulls a little bit, but, more so, you
12 see coming straight up from it --

13 Q. Mm-hmm.

14 A. -- that's the -- that's the forestay. So
15 that's the cable that holds the mast up. And so it
16 provides a -- a central point from which to attach
17 that.

18 Q. Okay. And let me just go to the next one,
19 then; 332, can you describe that?

20 A. (Deponent viewing photograph.) So this is
21 looking from the port bow over to the starboard side
22 of the vessel, and you can see the spray coming from
23 the waves as they hit the side of the boat. Again, I
24 took this just to, sort of, document the -- the power

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1 of the sea and the timeliness of salvage.

2 Q. Okay. How about this here, 333?

3 A. (Deponent viewing photograph.) This is --
4 this is looking, again, off the starboard side out to
5 sea and it -- it actually -- it shows a relatively
6 flat sea, but with a -- what looks to be a groundswell
7 coming in.

8 Q. Okay. I see a daggerboard up, is that what
9 that is?

10 A. (Deponent viewing photograph.) Yes, that's
11 correct.

12 Q. Do you know if that was up or down at the
13 time of the incident that put the --

14 A. No.

15 Q. -- vessel on the breakwater?

16 A. I don't know. They would certainly work
17 themselves up as the -- as the vessel was bounced on
18 the bottom, if they weren't broken in advance --

19 Q. Okay.

20 A. -- but I think it stands to reason that they
21 probably were up.

22 Q. Okay. And this is 334.

23 Is this, again, the starboard side of the
24 boat showing the waves?

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1 A. (Deponent viewing photograph.) That's

2 correct.

3 Q. Is there anything else about that picture
4 that means anything to you?

5 A. (Deponent viewing photograph.) I don't think
6 so.

7 Q. Okay. And 335, is there anything in that
8 picture that you want to tell us about?

9 A. (Deponent viewing photograph.) This is the
10 starboard side deck looking aft, towards the back of
11 the boat. And it -- it just, again, sort of, shows
12 the wave -- the wave height and the wave direction
13 affecting the vessel. You know, the -- the -- the
14 swell was consistently pushing that boat further up
15 the reef.

16 Q. Okay. And let's go to 346 [sic], anything of
17 note here?

18 A. (Deponent viewing photograph.) No. We're,
19 again, looking at the starboard side and the wave
20 action hitting the starboard side. I think -- I think
21 what we may be suffering from here, like I said
22 before, we often find it very difficult to document
23 wave action and wave height in a way that -- that, you
24 know, folks really understand just how good or bad it

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1 is. And so, you know, they say a picture is worth a

2 thousand words. I take a lot of pictures in that
3 regard.

4 Q. Okay. And -- and I'm going to correct what
5 I -- when I said "346," that's effectively in the page
6 in the PDF, but it's -- 336 is the Bates number.

7 Let's go on to the next one. 337, what is
8 this photograph?

9 A. (Deponent viewing photograph.) This is an
10 engine room. I believe that this is probably the
11 starboard engine room. What you see on the top left
12 is the steering ram for the autopilot.

13 And so, at the top of the picture, I believe,
14 is the main bulkhead in front of the engine room.
15 What you see, the -- the big silver block there, is
16 the engine, but it has been broken free of its mounts,
17 and that, sort of, circular ring, just to the left of
18 center of the photo, is where what we would call a
19 saildrive goes through the hull.

20 So the -- the transmission with the propeller
21 on it, similar to the bottom of an outboard motor on a
22 sail drive, protrudes through the bottom of the boat.
23 And when they're grounded, they're often broken off
24 and pushed upwards, which would break engine mounts as

1 well.

2 Q. Okay.

3 A. So, ultimately --

4 Q. So, just to clarify, does that saildrive come
5 down to the lowest point of the hull where it comes
6 out of the hull?

7 A. No. It would -- it would likely draw less
8 water than the keel or the rudder of the boat.

9 Q. Okay.

10 A. (Inaudible) and lower --

11 MADAM COURT REPORTER: I'm sorry.

12 A. -- but it does --

13 MADAM COURT REPORTER: Hold on one
14 moment.

15 A. -- hang below the bottom of the hull.

16 MADAM COURT REPORTER: Rudder of the
17 boat, okay, and I couldn't hear the next word that you
18 said.

19 Can you please repeat it?

20 A. I was saying that it -- it would likely hang
21 out -- the keel and the rudder of the boat would draw
22 more water. It would be deeper; however, this does
23 hang below the bottom of the -- of the hull, again, so
24 it does protrude from the bottom of the boat.

1 Q. Okay.

2 A. The fact that this is broken would suggest
3 that this the keel and rudder are already long gone.

4 Q. 338, what is this?

5 A. (Deponent viewing photograph.) This may be
6 the same engine room. I believe it is. Yeah, I
7 believe this is still likely the starboard engine
8 room.

9 (Technical difficulties.)

10 MADAM COURT REPORTER: I'm sorry, this is
11 still likely the, something, engine room. It -- there
12 was, like, a technical difficulty.

13 THE DEPONENT: The starboard engine room.

14 MADAM COURT REPORTER: Thank you.

15 BY MS. NIEMEYER:

16 Q. Okay. And now we have 339?

17 A. (Deponent viewing photograph.) Yup, that's
18 the -- that's the generator in the -- in the
19 foreground there. And I likely took the photo, just
20 in terms of salve value, to show that the generator
21 was still above the water.

22 Q. Okay. Now we're at 340.

23 A. (Deponent viewing photograph.) Okay.

24 Q. Not looking good for the engine.

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1 A. (Deponent viewing photograph.) No. I
2 believe that this is the other engine room, simply
3 just by looking at what's around it. It's clearly a
4 different environment. And based on the water level,
5 I want to say that I was probably incorrect in the
6 last engine being the starboard, simply because we
7 know that the starboard hull was deeper in the water,
8 and the water level in here is higher.

9 So this is likely the starboard engine, and
10 the other engine was likely the port engine.

11 Q. Okay. But is it -- is it fair to say that
12 both sides of the engines were no longer going to
13 be --

14 A. Yeah.

15 Q. -- functional?

16 A. The -- the issue with -- with save -- you can
17 save an engine that's been under water, as long as it
18 stays under water. Once it's exposed to oxygen,
19 that's when the corrosion sets in.

20 You know, I have -- I have a colleague who --
21 who submerged an outboard motor, and when he brought
22 it back, the first thing we did was chuck it back off
23 the dock and say, we'll get it when we're ready to fix
24 it.

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1 The electronic components, like the starter,
2 the alternator, the wiring harness, et cetera, they
3 don't like water, they'll be dead anyways. But in
4 terms of -- of declaring or recommending an engine as
5 a constructive total loss, that's really more about
6 air exposure than it is about water exposure. It's
7 about how much air it's been exposed to for how long
8 after it's been submerged in salt water.

9 Obviously, these are semisubmerged and they
10 had been at that point for, you know, a couple of
11 days. So, you know, my -- my assessment of these
12 would that be they're -- they're far beyond being
13 exposed to air at this time.

14 Q. 341?

15 A. (Deponent viewing photograph.) This looks
16 like a high pressure pump for a water maker.

17 Q. Is that something else you were looking at,
18 considering potential salvage value?

19 A. I think it was -- you know, I -- I have a
20 habit of, when I get in an engine room, just flash
21 pictures of everything in case there's anything that
22 you -- you want to reference later. I don't really
23 consider this particularly relevant to salvage value.
24 It's not a high value item, but it helps to show, at

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1 least, where the -- the water level was, maybe --

2 Q. Okay.

3 A. -- or wasn't.

4 Q. And this one, 342, what is this?

5 A. (Deponent viewing photograph.) Those would
6 be the -- the prefilters for the water maker, again,
7 for the desalination plant on board which shows
8 significant corrosion, but they've, obviously, also
9 been somewhat submerged.

10 In relation to the last photo or, in general,
11 one of the reasons that we take a lot of photos of
12 these things is to be able to make a comment on the
13 general maintenance of the vessel.

14 So, in some claims, we might have, for
15 instance, somebody that put a vessel up a reef, and
16 that happened because, you know, the -- the steering
17 failed or some component failed, which was due to lack
18 of maintenance. And so we would generally make some
19 effort to show the general standard of maintenance
20 applied to the vessel, especially, of course, if we
21 observed that there was poor maintenance being carried
22 out.

23 In this case, I don't recall any poor

24 maintenance or any evidence thereof. So it wasn't a

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1 particular concern, but it's something that we do look
2 for.

3 Q. Okay. So let's pop past this one, which we
4 already looked at, and go to 343.

5 A. (Deponent viewing photograph.) Here we are
6 again on the stern. What you see in that -- in that
7 little -- call it flap there, that's the inflatable
8 life raft in there. And so I -- I imagine I took this
9 photo as a reminder to say it's still on there. If
10 salvage happens, we should remove that before we start
11 removing the vessel just so we don't deploy it.

12 Q. Okay. Let's go to the next one, 344.

13 Can you explain what this is?

14 A. (Deponent viewing photograph.) This is the
15 hull number for the vessel. It's not particularly
16 clear, but, just like the one we showed on the -- on
17 the dinghy, it's a bit like a VIN number for a boat.

18 Q. Okay.

19 A. We always take this, as long as it's visible
20 on the boat, just to confirm that we are handling a
21 claim on the right boat.

22 Q. Okay. Great. Now 55 -- or 345, what is
23 this?

24 A. (Deponent viewing photograph.) So this is

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1 the interior of the starboard forward cabin and this
2 is the -- the -- the breakwater showing up inside the
3 boat. This is where the -- the hull had been broken
4 away so far that there -- there was no bottom.

5 Q. Okay. Next. 346.

6 A. (Deponent viewing photograph.) This is the
7 -- I believe this is the starboard aft cabin. And,
8 again, it shows the level of destruction. What --
9 what the photo doesn't show is that all of that stuff
10 was moving up and down. I think that's documented in
11 the video that we already looked at a little earlier.

12 At the bottom left, it looks like a -- like a
13 -- like a storage bin. Across the top of that
14 would've been a bed. But at the bottom left, you can
15 see what looks to be a -- a rotomolded plastic tank,
16 could have been the water tank, the waste tank, but
17 it's obviously floating up and down, which -- which
18 shows that the -- the bottom in that area has been
19 broken out and it's full of water.

20 Q. Had any of those tanks been compromised when
21 you came there?

22 A. Not to my knowledge, there was no -- there

23 was no sheen in the water, so there didn't seem to be
24 any leakage of fuel. The -- the fuel tanks on these

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1 boats, if I remember correctly, are up in the bridge
2 deck, so they would've been reasonably protected.
3 I'll -- I'll have to -- I'd have to double-check on
4 that, but I'm near positive that's how Catana does it.
5 The rest is -- is water and waste tanks.

6 Unfortunately, in terms of sewage discharge
7 in the Caribbean, people aren't so great about that
8 anyways, but, given that the boat had just been at
9 sea, I would've expected that the boats would've been
10 emptied anyways.

11 Q. Okay. This one, 347, what is that?

12 A. (Deponent viewing photograph.) Ahh,
13 honestly, that is so vague, I couldn't tell you. I --
14 I would -- if I were to venture a guess, I would say
15 that is, again, in that starboard aft cabin, because
16 that's where everything was -- was most broken apart
17 and there was, you know, loose cabinetry.

18 Q. Okay. And --

19 A. (Deponent viewing photograph.) And I --

20 Q. -- 348?

21 A. (Deponent viewing photograph.) This is,
22 again, the -- the starboard forward cabin.

23 Q. Okay. Let's go on to the next one, 349.

24 A. (Deponent viewing photograph.) I think this

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157

1 is even further starboard forward, so I would've been
2 standing on the rock that we saw in the last photo,
3 looking through the door.

4 Q. Is that a nav station?

5 A. (Deponent viewing photograph.) No. This
6 is -- well -- well, I mean, it's a desk in a cabin.
7 Again, what -- what you see at the top of the photo is
8 -- is the rack for a bed, which is almost like a box
9 spring, and the gray thing is the mattress. So the --
10 the nav station on this boat was up on the bridge
11 deck, so it was up -- up high.

12 Q. Okay. Okay. So let's keep going, then, 350.

13 A. (Deponent viewing photograph.) I think this
14 is, again, looking -- looking aft on the starboard
15 side, I believe.

16 Q. And you can see the water in the bottom part
17 of that picture.

18 A. (Deponent viewing photograph.) Yeah. And --
19 and the reason I -- I say "looking aft" is because, if
20 we look at the cabinetry, we see that the cabinetry on
21 the right-hand side of the photo is up high.

22 Q. Mm-hmm.

23 A. (Deponent viewing photograph.) That's
24 because that was overhanging into the bridge deck.

↑

158

1 Q. Okay. And 61 [sic]?

2 A. (Deponent viewing photograph.) This, again,
3 is -- is at the doorway, starting to look -- I think
4 this is probably on the portside --

5 Q. Okay.

6 A. -- on the door, perhaps.

7 Q. And to correct, I -- I meant 351, not 61,
8 which is the number on the PDF.

9 So that would be -- are those stairs your --
10 is that your --

11 A. (Deponent viewing photograph.) Mm-hmm.

12 Q. -- foot standing on stairs?

13 A. (Deponent viewing photograph.) Yeah, so this
14 is going down one of the companion ways into the hull.

15 Q. Okay.

16 A. (Deponent viewing photograph.) I could only
17 see this being the starboard side, to be honest,
18 because there was that -- that much water in it. The
19 portside was high and dry.

20 Q. Okay.

21 A. (Deponent viewing photograph.) The other

22 thing -- the reason that I feel a little thrown off by
23 that is because, I remember when I went down the
24 starboard companionway, there was a lot of cabinetry

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159

1 on the steps. So it may be that, since this is the
2 last photo in the lot, that we had removed all of that
3 mess by that time.

4 Q. Oh, okay.

5 A. Yeah.

6 Q. Okay. And I'm going to close this and move
7 on to -- let's just look for the next one here. Hold
8 on one second.

9 A. Sure.

10 Q. So we're going to close out that document,
11 and we're going to go to the next AB -- we're getting
12 close to being done with all the documents with your
13 initials on them.

14 A. (Deponent laughs.)

15 Q. I'm going to go to another movie.

16 A. Sure.

17 Q. Hold on one second. I'll share that with
18 you. Okay. Share screen. Share the movie.
19 Technology is great.

20 Do you see that?

21 A. (Deponent viewing video.)

22 Q. Okay. I'm going to just back up here a
23 little.

24 A. (Deponent viewing video.) So that

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160

1 actually --

2 MADAM COURT REPORTER: Excuse me. Excuse
3 me. Can you please not talk while the video is going
4 on? I can't hear, because all I can hear is the
5 video. I just want to make you aware of that. You
6 started to say, so that actually, and all I could hear
7 was them talking on the video.

8 BY MS. NIEMEYER:

9 Q. Okay. Okay. Why don't we just play the
10 video through, and then we can talk about it after.

11 A. (Deponent nods head.)

12 Q. I'm going to start it again.

13 A. (Deponent viewing video.)

14 MS. NIEMEYER: Okay. Can you hear me
15 now?

16 MADAM COURT REPORTER: (Nods head.)

17 THE DEPONENT: Yup.

18 BY MS. NIEMEYER:

19 Q. Okay. Just to -- for the record, that video
20 that we just played was AB000352.

21 And, Mr. Ball, I want to ask you, just so
22 that we have this authenticated, is this another of
23 the things that -- that you took while you were there
24 to inspect the vessel?

↑

161

1 A. It is, indeed.

2 Q. And was this, sort of, your attempt to do a
3 walkabout and show the condition in one fell swoop?

4 A. Yeah, it was -- it was mainly a way just to
5 show that both hulls were badly compromised, and it --
6 it speaks a little bit to the photos before, in terms
7 of port versus starboard --

8 Q. Mm-hmm.

9 A. -- because all of -- all of those areas were
10 very quickly captured in this video. And so, for the
11 record, I started on the portside. I stopped. You
12 can see there's a quick shot of the nav desk there,
13 the navigation desk and the GPS, or, at least, the
14 Raymarine one, and then I moved across to the
15 starboard side and just looked fore and aft.

16 Q. Okay. And I'm just going to freeze there.
17 So this -- and it's -- and I'm just going to say for
18 the record, this is at 47 seconds into the that video.

19 You can see -- can you describe that for a

20 moment?

21 A. (Deponent viewing video.) So, in the center
22 of the frame is a cover, and, obviously, presumably,
23 behind it is -- is -- is the multifunctional display,
24 which is a GPS unit. It's a Raymarine unit. It's an

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1 E120, which is a 12-inch unit. Also, notably, at the
2 bottom right, is a Furuno GPS unit.

3 So, if you look at the original survey that
4 Mr. Andersson commissioned when he purchased the
5 vessel, it was done by a man named John Sands, it
6 references three different GPS units on board. One is
7 the Raymarine E120 in the middle of frame there. One
8 is the Furuno GPS navigator at the bottom right, which
9 would likely not save any information. That is a
10 very, very basic unit. And the other, I believe, was
11 a Garmin unit -- yes, it was a Garmin 721 unit --

12 Q. Okay.

13 A. -- and that --

14 Q. Now, this just -- I'm going to stop you right
15 there.

16 This area where this Raymarine was, was
17 inside the salon of the vessel (indicating); is that
18 correct?

19 A. (Deponent viewing video.) Correct. It is

20 the port aft corner of the salon.

21 Q. And was it high up above the water?

22 A. It is, yes.

23 Q. And was it in the interior of the boat?

24 A. That's correct.

↑

163

1 Q. When you were there, did you make any effort

2 to turn on that Raymarine?

3 A. No. There was no power on the vessel. Both

4 the battery banks had been submerged at that point.

5 Q. Okay. Did you bring any kind of an auxiliary

6 power so that you could turn things on if you needed

7 to?

8 A. No. We -- we waded out to the vessel, so,

9 no.

10 Q. Okay. Was there ever any attempt to have

11 somebody do that later?

12 A. No. This is something that we would normally

13 do during salvage, but, of course, we never moved to

14 that point.

15 Q. Now, I'm going to forward -- I'm not going to

16 play it, I'm just going to kind of scroll forward

17 here, so that we can get back to the other part I

18 wanted to ask you a question of, which is really right

19 at the end. This part here (indicating). So at about
20 -- interesting, it also looks like 47, so this isn't
21 really helpful.

22 But all the way at the end, there's -- it
23 stops at a photo of what appears to be the helm; is
24 that correct?

↑

164

1 A. (Deponent viewing video.) Yeah, that -- if I
2 remember correctly, there are two helms on this boat.
3 There's one on each side, but it is one of them, yes.

4 Q. Do you have any recollection about where the
5 Garmin GPS was located?

6 A. I don't, no.

7 Q. Okay. So it would've been at -- at -- do you
8 know whether -- was there any indication to you about
9 which of these two helms would've been the helm that
10 was used most frequently?

11 A. Without seeing the other helm, no. However,
12 it's quite common that, on a catamaran with two helms,
13 only one of them will have engine controls. It -- it
14 just costs more to put a second set of controls on.
15 So if that was the case on this boat, then I would
16 obviously say that this is the primary helm, because
17 it has engine controls.

18 Q. Okay. And if you only had one GPS, would you

19 expect that to be found at the primary helm?

20 A. I will answer that with yes and no. I'll
21 qualify the answer.

22 It's a sailing vessel, so engine control is
23 only really important when you're coming alongside a
24 dock, at which point you don't need GPS.

↑

165

1 The other -- the other part of this is that
2 these GPS units and navigational equipment run on a --
3 a network system, so they share information. There's
4 actually a software language called NMEA, the National
5 Marine Electronics Association. And so all the
6 different manufacturers will share sentences through a
7 common language, let's say. They -- they have their
8 own proprietary sentences as well.

9 But if I wanted to buy a speed transducer
10 from Furuno and a wind transducer from B&G and have
11 the -- the information shown on a Raymarine screen, I
12 could do that. The reason that this is relevant is
13 that, if I were to install an after-market GPS device
14 at an exterior helm on the boat, I may be motivated to
15 do -- to choose that location based on the power and
16 the network available to me in that area.

17 So if, for instance, in this case, there was

18 a transducer or a power supply or something on the
19 portside that made it more attractive to install
20 there, that would be a motivation as well.

21 Q. Okay. So is it -- I -- I'm gathering from
22 this, that, as we sit here today, you don't remember
23 where the GPS was located, the -- the Garmin?

24 A. That's correct. That's correct.

↑

166

1 Q. Okay. Did you do anything to confirm that in
2 your investigation?

3 A. I mean, after we were at the boat, no.

4 Q. Okay.

5 A. There -- there -- the Raymarine one at the
6 navigation station there would obviously be the safest
7 bet, because it is in a -- in a protected area. And
8 the Raymarine system is a little bit more complex in
9 the sense that you can -- you can save a track on it
10 if you choose to save it.

11 So it's -- it's somewhat SOP for us if we
12 move to a point of salvage to retain a GPS, and we
13 call it interrogating it, it's not really
14 interrogating it, look for -- look for any evidence of
15 a saved track on the unit. That saved track is a
16 function that the user has to turn on.

17 So there's no guarantee that it will be

18 there. It's not -- it's not like it's always tracking
19 you and recording where you've been. It's a useful
20 feature for some. Others choose not to use it. It's
21 not something that is turned on by default at the
22 factory. So, you know, it becomes an aid in our
23 investigation, but it's not something that we can rely
24 upon.

↑

167

1 Q. Okay. And the last question I have for you
2 about both of those GPSes; to your knowledge, did you
3 check to see if they had chips in them?

4 A. I did not. The chips in them contain the
5 chart data. So when you enter the chip into the GPS
6 receiver, it is, generally, a secured chip with the
7 Navi -- well, in the Raymarine case, it has what's
8 called Navionics data on it. There's a company called
9 Navionics that makes the chart cards for Raymarine GPS
10 devices.

11 If you want to save a track, it is saved onto
12 the -- the hard memory on the GPS unit, and then you
13 have to insert a different card to save it to the
14 card. But the -- the chart cards are generally set up
15 as read only so that they can't be pirated.

16 Q. Okay. And -- and, to your recollection, what

17 was the era of the electronics on this vessel?

18 A. The E120 has been replaced two, if not three
19 times now.

20 You know, I had a boat that was built in 2009
21 that had an E120 on it, so that's -- that's a decade
22 old now. I feel old all of a sudden. However, the --
23 the age of the electronics is less relevant than the
24 age of the chart card.

↑

168

1 So there are methods of updating some chart
2 cards. You know, the more modern GPSes actually have
3 Wi-Fi connectivity in them, so it can connect to an
4 online server and download chart updates. Much like,
5 you know, a -- a prudent mariner, in fact, on a
6 commercial vessel, it's required. If you have paper
7 charts, you are required to go through the list of
8 updates and mark them on your charts.

9 So the charts are updatable. There's --
10 there's no -- no real reason that the chart should be
11 out of date unless it hasn't been updated. The age of
12 the electronics is -- is really only relevant, in my
13 sense, to functionality. You know, does it work or
14 does it not?

15 Q. Oh, okay. And just a -- I'm going to go back
16 to the concept of the chip.

17 Is it your understanding that, at the time --

18 A. Yup.

19 Q. -- in the era of these electronics, was it
20 more likely that a chip would've provided the chart?

21 A. So there are -- there are two ways to
22 purchase these electronics. One -- and I'm not sure
23 if this was the case with the E120, but it was certain
24 with the E120W that followed it.

↑

169

1 You could purchase the -- there are a number
2 of different chart packs depending on where you are in
3 the world. You could purchase the unit with a chart
4 pack preloaded on its internal memory.

5 A great example of that would be if you had a
6 boat that spent half of its year in the Mediterranean
7 and half of its year in the Caribbean, you could buy
8 one with a Caribbean chart backloaded and insert a
9 card from a Mediterranean and you'd never have to swap
10 anything around. The other option is to buy it with
11 nothing loaded and buy the charts, and the charts are
12 quite expensive.

13 Q. So if -- if there was a chart chip in these
14 units, would the chip be something that would be
15 worthy of stealing if you were a person who wanted to

16 take things off of a boat like this?

17 A. If you were a looter, yes, absolutely.

18 However, I think, if you -- my experience is that --

19 that looters, when it comes to -- especially in this

20 area, the Dominican Republic, Cuba, Haiti, you know,

21 as soon as we have a wreck there, there are --

22 there's, almost immediately, looting if we don't put

23 security on board.

24 The looters aren't quite so discerning about

↑

170

1 what they take. If it's shiny and electronic, they'll

2 take it. If it looks -- you know, if it looks like

3 it's made of bronze and worth money or something they

4 could use or sell, they'll take it. I mean, I suppose

5 it's all theory, really, but I -- I wouldn't expect a

6 looter to know that there's value in that card without

7 just stealing the entire GPS.

8 Q. Now, are you aware of whether things were

9 stolen off the vessel while it was sitting there with

10 security?

11 A. Well, I -- I should hope not, with security.

12 Obviously, there was security there when I got there.

13 I'm -- I'm not aware of how long it may have sat

14 without security. I'm obviously, not aware of what

15 happened afterwards. But, you know, I think you could

16 see in the video there, there were -- there were at
17 least three people on board as, quote/unquote,
18 security. I should hope that the people weren't
19 looting things at that -- at that time.

20 Q. Are -- do you recall, when you were in the
21 vessel, seeing a brand new oven?

22 A. No.

23 Q. Okay.

24 (Off the record at 2:12 p.m.)

↑

171

1 (Recess taken.)

2 (Back on the record at 2:20 p.m.)

3 MS. NIEMEYER: Okay. So are you guys
4 seeing a picture with the Bates number AB000353?

5 MR. GOLDMAN: Correct.

6 THE DEPONENT: Yes.

7 MS. NIEMEYER: Okay. And just for the
8 record, that is part of a ten-page collection, which
9 was also produced and we're just going to document
10 what that is.

11 BY MS. NIEMEYER:

12 Q. And, Mr. Ball, to your recollection, is this
13 a picture that you took while you were there to
14 inspect the vessel?

15 A. (Deponent viewing photograph.) It sure looks
16 like it --

17 Q. Is this the --

18 A. -- and it's -- go ahead.

19 Q. Is this the tarp setup you were talking about
20 that you put together to -- for the security guards?

21 A. (Deponent viewing photograph.) Yeah, so this
22 is -- this is in the cockpit, looking off the port --
23 the port transom, the port stern, which shows the
24 other -- the other helm station. Unfortunately, it's

↑

172

1 got a cover on it, so it doesn't tell us a whole lot
2 about it.

3 But what you see on the left side of the
4 picture is -- there are actually screens that are made
5 for creating some shade which have been -- they
6 normally stick out on a slightly more horizontal
7 fashion, in order that there's still some airflow and
8 there's shade in the cockpit. In this case, they've
9 been laid down to help break the waves that were
10 entering the cockpit.

11 Q. Okay. And I'm going to move on to the next
12 page of those photos, the one numbered 354.

13 What is this?

14 A. (Deponent viewing photograph.) This is --

15 this is the center of the bridge deck, looking aft.
16 So that's -- that's the main sheet wrench that you see
17 in the middle there. The piece of wood, it looks like
18 a bed frame, but, given that it's in somewhat of a
19 V-shape, I would bet that it's out of one of the
20 forward cabins.

21 Q. Would that be the slots from one of the
22 bunks?

23 A. Yeah, exactly.

24 Q. Okay. 355, can you describe that?

↑

173

1 A. (Deponent viewing photograph.) So this is
2 the -- this is inside the cockpit, looking out towards
3 the starboard stern. And what you can see on the top
4 left there is a bed sheet that's been rigged up to
5 help break some of the waves coming in.

6 Q. Okay. And 356?

7 A. (Deponent viewing photograph.) So this is a
8 seemingly random photo that I took from the cockpit,
9 looking in towards the salon, but also slightly
10 looking out over the -- the deckhouse as well.

11 Q. Okay. So -- so would I be correct in
12 assuming that, on this vessel, the cockpit was
13 elevated and you took steps down to go into the salon?

14 A. (Deponent viewing photograph.) That is
15 probably accurate, yes.

16 Q. Okay. 357?

17 A. (Deponent viewing photograph.) Okay. So
18 this is in the salon, looking towards the starboard
19 forward corner, which shows the galley. The oven you
20 mentioned is probably there in the shadows, but not
21 very clearly shown.

22 Q. Okay. And -- and I think you'll see there's
23 a more clear version of that picture, I believe.

24 Okay. And this --

↑

174

1 A. (Deponent viewing photograph.) This is in
2 the salon looking towards the port forward corner
3 from, sort of, half -- halfway forward on the
4 starboard side.

5 Q. Okay.

6 A. Just showing that -- that -- I think I took
7 this to show the amount of alcohol that was being
8 consumed by the security guards.

9 (Laughter.)

10 BY MS. NIEMEYER:

11 Q. Okay.

12 A. It's the Dominican Republic.

13 Q. Yeah. Yeah, it is. It is.

14 All right. And this is 359.

15 A. (Deponent viewing photograph.) So this is
16 taken --

17 Q. Are these the guards that -- the men that you
18 see in this picture, are they the security guards?

19 A. (Deponent viewing photograph.) Correct, they
20 were described to me as security guards.

21 Q. Okay. And 360?

22 A. (Deponent viewing photograph.) Here's --
23 here's the galley again, at the starboard forward
24 corner of the salon, and there's your shiny new oven.

↑

175

1 Q. Okay. So -- so we can establish from this
2 picture that, at least on the day that you were there,
3 there was still an oven on the boat?

4 A. Correct.

5 Q. Okay. All right. Not that it's relevant to
6 the work you did, but, later, that oven walked away
7 while security guards were on the boat.

8 A. Interesting.

9 Q. Yeah. So, 361?

10 A. (Deponent viewing photograph.) This is,
11 obviously, as we're leaving. We've gotten down off
12 the boat. I likely took this photo -- it's not so

13 much of an issue in the Dominican Republic, but, you
14 know, if we were, for instance, in Puerto Rico,
15 environmental impact would be a big issue and cost of
16 -- of cleanup for that as well.

17 And so I think I just probably took this
18 picture to; A, show that there was no significant oil
19 on the breakwater, but also that there was some fluxom
20 out there. And, obviously, you can see Mr. Andersson
21 on the right there, with his sexton in his left hand.

22 Q. And then 362 appears to be about the same,
23 just a little bit different timing; is that correct?

24 A. (Deponent viewing photograph.) Correct. I

↑

176

1 think I just double hit the button.

2 Q. Okay. Do you have any recollection, as
3 you're sitting here today, of a -- of how much time
4 you actually spent on the boat?

5 A. Not particularly, no.

6 In this case, it likely wouldn't have taken
7 that long. You know, certainly less than an hour.
8 You know, the -- that vessel was, in my opinion, so
9 far gone. You know, in terms of its condition and its
10 state, as far as whether it was worth salvaging or not,
11 you know, I was -- I was pretty confident in my
12 recommendation to underwriters that it be considered

13 as a constructive total loss.

14 Q. Okay. I'm going to close that one. Okay.

15 Give me a sec. We'll get to the next one quickly.

16 Okay. I have to go to full-screen view to share with
17 you. That's why I keep taking so long to get back and
18 forth between these things.

19 Okay. So here we have another collection of
20 documents. This one's about 24 pages. It starts with
21 AB000363 and ends with AB000386.

22 Mr. Ball, are these also photos, to your
23 understanding, that you took in the ordinary course of
24 business when you went to inspect the vessel?

↑

177

1 A. (Deponent viewing photograph.) I believe so,
2 yes.

3 Q. And are these taken as you were leaving the
4 vessel after your inspection?

5 A. That's correct.

6 Q. Is -- is there a reason that you took these,
7 at that point in time, as opposed to the others?

8 A. Probably just because we were dealing with
9 the sunrise on the way out there. You know, one -- my
10 experience is that you can never have enough pictures,
11 because once you -- once you leave a foreign country,

12 it's very expensive to go back and take more. So some
13 of it is probably just habit.

14 Q. Okay. So I see there's a little boat there
15 (indicating).

16 Was that -- you -- you mentioned you waded in
17 and out, correct?

18 A. (Deponent viewing photograph.) Correct.

19 Q. Okay. So that --

20 A. (Deponent viewing photograph.) So that boat
21 -- that boat was likely one of the resort boats. You
22 can kind of see under the -- under the bow, it looks
23 like it's pushing water. It looks like it's underway.
24 I know we can't see the stern.

↑

178

1 Q. Okay. It's like a ghost boat with no people
2 on it in this picture.

3 Okay. So 366, there's the person all the way
4 in the back.

5 A. (Deponent viewing photograph.) Yeah.

6 Q. Okay. So that boat's not related to your
7 inspection?

8 A. Not at all.

9 Q. And -- and it does appear, though, that in
10 the back corner of the boat, there's a nice line of
11 waves there that shows what the waves were like on the

12 starboard side, correct?

13 A. (Deponent viewing photograph.) Correct. And
14 I think one of the -- one of the important references
15 here is you can kind of see how flat it is on the
16 inside of the breakwater, but just how rough it is on
17 the outside.

18 And, again, one of the things that I touched
19 on earlier was the idea that if -- if you're
20 approaching the shore from the sea at night, you've
21 got all this light on the shore where all the resorts
22 are, and then you've got this nice flat reflective
23 water, and then all of a sudden you've got breaking
24 water and rough water.

↑

179

1 To me, as a mariner, that says there's
2 something bad between me and the shore. I probably
3 don't want to go near it. So it's just -- it's -- I
4 know that, you know, the -- the -- the lack of
5 markings on this breakwater have come into question.
6 And that is something, I think, that would speak to
7 its visibility, even though the breakwater itself is
8 not visible, the change in the sea state would've been
9 highly visible in, my opinion.
10 Q. So, in your opinion, would that be negligence

11 on the captain's part not to see that?

12 A. The -- I'm going to fall back to something
13 called the International Regulations For the
14 Prevention of Collision at Sea. They -- they speak to
15 keeping a proper watch. And I would say that that is
16 something that you should be picking up on if you're
17 keeping a proper watch. I have no doubt that there
18 was some significant fatigue involved, so I can
19 understand why it wouldn't have been seen. But I
20 think it should've been seen by a prudent mariner,
21 yes.

22 Q. Okay. So, just to clarify, is it your
23 opinion that negligence on the part of the captain
24 could've contributed to his ending up on that

↑

180

1 breakwater?

2 A. I believe it could've contributed, yes.

3 Q. Okay.

4 A. And -- and to -- to qualify that, again, I
5 would -- I would go back to the ability to maintain a
6 proper watch. And based on the information that --
7 that we have, you know, it looks like Mr. Andersson
8 was effectively in command and control of the vessel
9 for, it looks like, over 48 hours without any real
10 help. I wouldn't expect a -- a mariner to hold a

11 watch longer than, sort of, four to six hours and be
12 able to maintain a -- a reasonably alert capacity.

13 Q. We're going to get back --

14 A. There -- there -- there's obviously --

15 Q. We'll get to that.

16 A. Yeah.

17 Q. I want to --

18 A. Okay.

19 Q. -- get through the pictures, and then we're
20 going to go to your report. So we'll get to that
21 stuff.

22 A. (Deponent nods head.)

23 Q. Okay. So this is just another picture of the
24 same view, correct, at 367?

↑

181

1 A. (Deponent viewing photograph.) Correct.

2 Q. Okay. 368, a little more breaking wave
3 action, same picture?

4 A. (Deponent viewing photograph.) Correct.

5 Q. Okay. It looks like 369, again, similar
6 view, a little more wave action?

7 A. (Deponent viewing photograph.) Yup.

8 Q. And 370, what is that in the foreground
9 in 370?

10 A. (Deponent viewing photograph.) Those are
11 buoys. They're floating -- floating buoys. I mean,
12 they could be fish pots. They could be swim markers.

13 Q. Okay.

14 A. They could be anything.

15 Q. Okay. And 371 appears to be the same thing,
16 correct?

17 A. (Deponent viewing photograph.) Correct.

18 Q. Okay. 372, same thing?

19 A. (Deponent viewing photograph.) Correct. And
20 I likely shot this string, again, just trying to catch
21 wave crests, trying to document the ports, again.

22 Q. Okay. And let's see another similar photo
23 on 373, correct?

24 A. (Deponent viewing photograph.) Correct.

↑

182

1 Q. Okay. I'm just going to go through these
2 until we see something different, and -- and if you
3 want to tell me that you see something different, let
4 me know.

5 I don't want to waste everybody's time on a
6 bunch of the same, essentially, picture, but you have
7 -- you did take these pictures, correct?

8 A. That's correct.

9 Q. Okay. Now, this picture appears to show that

10 mangrove sanctuary, again, or growth area; am I right?

11 A. (Deponent viewing photograph.) Correct.

12 Correct.

13 Q. Okay. And there's more and more and more of
14 those. I'm going through 78, 79, 80.

15 What is this picture here with the cargo ship
16 in the background?

17 A. (Deponent viewing photograph.) This is just
18 another angle. I've obviously walked further to the
19 east along the beach, and there happens to be a cargo
20 ship in the background.

21 Q. Okay. And so this is 381.

22 Now, how far away was that cargo ship, would
23 you estimate?

24 A. (Deponent viewing photograph.) Oh, probably

↑

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1 least a half mile.

2 Q. So, at -- at -- at least, at a half mile out,
3 there was significant depth, correct, or that cargo
4 ship wouldn't have been going through there?

5 A. Correct.

6 Q. Okay. All right. And this photograph here,
7 which is marked as 386, it looks like --

8 A. (Deponent viewing photograph.) Yup.

9 Q. -- this photograph, it looks like you took a
10 picture of -- of a business card, and is this the
11 diver you mentioned before?

12 A. (Deponent viewing photograph.) It is. So
13 Mr. Andersson gave me this card. If -- if you see in
14 the background, it's actually my -- my handwritten
15 notes here (indicating) from the statement that he
16 gave me. And you can also see in the background,
17 that's the cafe table where I met him to take the
18 statement.

19 Q. Okay. And -- cafe table, so I'll -- I'll get
20 to that part.

21 But these handwritten notes, did you keep
22 those?

23 A. Yup, right here (indicating).

24 Q. Did you provide those notes to either

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1 Mr. Goldman's office or to Great La -- or to Concept
2 at any point?

3 A. That's -- that's a very good point. We may
4 not have done.

5 Q. Okay.

6 A. I'd have to go back and check. I am happy to
7 provide them.

8 Q. Okay. They would be responsive to some of

9 our discovery.

10 MS. NIEMEYER: So, yes, I would like to
11 ask that any notes -- Michael?

12 MR. GOLDMAN: Michelle, if there's been a
13 snafu -- if there's been a snafu, and those weren't
14 part of the file he sent me, yes, they'll be produced.

15 MS. NIEMEYER: Yeah, we weren't -- we
16 didn't receive any notes all --

17 MR. GOLDMAN: Okay.

18 MS. NIEMEYER: -- so they were not.

19 THE DEPONENT: And that would be entirely
20 our fault as well, if they weren't.

21 MS. NIEMEYER: Okay. Now, let me just --
22 I'll get done with authenticating these things, and
23 then we'll get back to that meeting you had. So let
24 me just close this and exit full screen and close the

↑

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1 document. This is rather tedious, but it works.

2 Okay. So -- no, we don't need the résumé.

3 All right. Guess what? We're done with all the
4 documents -- those documents. We've got plenty more
5 where those came from, but not those ones. I'm going
6 to close this folder and -- all right. I'm sorry.
7 Let me go back now, I'm just going to take a peek at

8 some notes, but there's plenty of stuff for us to
9 cover here.

10 (Pause.)

11 BY MS. NIEMEYER:

12 Q. Okay. I wanted to ask you just about a
13 specific timeline of the boat inspection. You
14 mentioned that you were delayed, and I'm going to show
15 you an e-mail later, I'll just tell you this now, that
16 -- that said you were delayed.

17 Did you have any contact with Mr. Andersson
18 the night before the inspection?

19 A. Not as far as I recall. I mean, there might
20 have been something to say, you know, I'm -- I'm here,
21 I'll see you in the morning, perhaps.

22 Q. Okay. Nothing of any substance is --

23 A. I -- I don't recall meeting him or anything
24 in that time frame.

↑

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1 Q. Okay. So the first time you met
2 Mr. Andersson, or -- or really had a substantive
3 conversation, would've been the morning of your
4 inspection, correct?

5 A. Correct.

6 Q. Were there any significant phone
7 conversations prior to that where you would've taken

8 notes about what he told you?

9 A. No.

10 Q. Okay.

11 A. The -- the way that we -- if I -- if I
12 remember correctly, and -- and, at least, correct me
13 if I'm wrong, because that was a long time ago. But
14 if I remember correctly, I had just come back from a
15 dismasting claim in Dominica, which is different from
16 the Dominican Republic.

17 And so, in the normal market, I spend a lot
18 of time on the road, and so the office would -- would
19 handle, you know, sort of, taking on the job, and then
20 they'll pass it on to me and say, you know, off you
21 go, go figure it out. So I would imagine that almost
22 all of that communication, prior to me going out
23 there, would've been handled by Bill or by the office
24 here.

↑

187

1 Q. Okay. So just to -- to clarify from -- to
2 understand where you were at that moment, had you
3 reviewed any documentation at all before you got to
4 the boat?

5 A. Yes, I would've reviewed everything on the
6 flight, on the way.

7 Q. Okay. So you got there, presumably, in the
8 evening, correct?

9 A. Yeah, I think -- I think, actually, in -- in
10 that file that you pulled up were my flight
11 arrangements, saying that probably doesn't reflect the
12 delayed flight.

13 Q. Oh.

14 A. It might be --

15 Q. Yeah.

16 A. -- because it should be the new -- new
17 bookings, but -- yes.

18 Q. Well, there's --

19 A. I -- I would've gotten there sometime in the
20 evening.

21 Q. Okay. And then, so the first thing in the
22 morning, when it's barely getting light from your
23 pictures, you walked along the beach from your hotel,
24 I gather?

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1 A. Yup.

2 Q. And you went to the vicinity of the dive
3 shop, correct?

4 A. Correct.

5 Q. And then you walked out -- you waded to the
6 boat.

7 Did -- did you meet Mr. Andersson at the dive
8 shop?

9 A. I believe I met him on the beach with the --
10 with the salvor. There's a -- there's a resort there.
11 We -- when we were going through the photos, I
12 mentioned that there was a little dock on the
13 left-hand side where a resort was, I guess to the east
14 of the where the dive shop was, sort of, the end of
15 the beach, if you will, and we met on the beach there
16 to proceed to the boat.

17 Q. Do you remember the name of the salvor that
18 was with you at that inspection?

19 A. No. I wish I did.

20 Q. Was he there the whole time?

21 A. Yeah, he came out with us, I believe, to the
22 boat. If he wasn't there when we went out to the
23 boat, he was definitely there when we came back,
24 because we sat on the beach and chatted with him a

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1 little bit about his capabilities and about his
2 pricing.

3 Q. Do you have any recollection of that
4 conversation?

5 A. In the back of my head, I want to say that he

6 quoted 70,000, but I -- honestly, I wouldn't -- I
7 wouldn't back that up too far, because I wasn't in a
8 position to take any notes. I just walked out,
9 obviously, through the water, so I didn't exactly have
10 a notepad on me.

11 Q. Okay. And -- and that would've been a ch --
12 that would be his charge if he charged you for the
13 salvage, as opposed to doing it, for the right to sell
14 the parts off the vessel?

15 A. Correct. So that would -- that would've been
16 for salvage, not for removal of wreckage. So salvage
17 is obviously done with an eye to save as much as
18 possible if you want -- if you wanted to retain sell
19 -- that sell value of the vessel.

20 If we move to wreck removal, it's obviously a
21 lot cheaper and it's less surgical. And because of
22 the position of this wreck and the sea state around
23 this wreck, it would've been a very fairly hairy
24 salvage job to try and remove anything intact, or it

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1 would've involved some very expensive equipment.

2 Q. Okay. So you looked at the boat, you sat on
3 the beach with the salvor, what happened after that?

4 A. I believe I went back to my hotel room and --
5 and got showered off so that I could then meet with

6 Mr. Andersson and get his statement.

7 Q. Is it your practice to voice-record
8 statements?

9 A. No, not generally. In this case, I --
10 I transcribed the statement, which is in this document
11 (indicating), which we'll make sure -- we didn't get
12 to you, which is then typed up into this document that
13 you should have (indicating) --

14 Q. Okay.

15 A. -- which is a signed --

16 Q. We'll be looking at that.

17 A. Okay.

18 Q. We'll be looking at that.

19 So -- okay. So, the handwritten notes that
20 you wrote, what's your process when you do a
21 statement? Because it -- did you ever ask
22 Mr. Andersson to write out for you what happened?

23 A. No. No. So I -- I make a point of not
24 asking leading questions. But if -- you know, we

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1 basically say, all right, let -- let's start with
2 where you left off from, your -- your last part, let's
3 say, and explain to me, you know, what happened, when
4 it happened, who was there. We'll ask questions along

5 the way, you know, what was the weather like? Were
6 you feeling tired? When was the last time you
7 maintained this piece of equipment, et cetera?

8 But, certainly, as part of our investigative
9 process, we -- we do avoid leading questions. We
10 don't try to lead anybody in their statement.

11 Q. Okay. But that's not the question I asked
12 you.

13 Did you ask him to write down, himself --

14 A. No.

15 Q. -- what happened?

16 A. No.

17 Q. Okay.

18 A. No. He --

19 Q. Okay.

20 A. -- would've submitted that directly to --

21 MADAM COURT REPORTER: I'm sorry.

22 A. -- the insurers.

23 MADAM COURT REPORTER: Excuse me. I

24 didn't hear the very first two words that you just

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192

1 said.

2 Can you start over?

3 THE DEPONENT: Me?

4 MADAM COURT REPORTER: Yes.

5 THE DEPONENT: Sure.

6 A. I said, he would've submitted that directly
7 to his insurers in his -- in his claim form. So part
8 of -- part of our process is, generally, to compare
9 the statement that we get with what's on the claim
10 form.

11 Q. Okay. Are you aware that, in this case,
12 Mr. Andersson had asked the claims representatives at
13 Concept whether he needed to submit the form before or
14 after you got there, and they had said he could wait
15 to submit a claim form?

16 A. No.

17 Q. Okay. I'm going to show you something.
18 We'll -- we'll go over that later.

19 So just to get into this process of how you
20 go about getting the statement; so you -- do you have
21 a format that you follow, generally, when you're
22 asking somebody what happened?

23 A. A chronological format, yeah.

24 Q. Okay. And is that led by him? How does that

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1 work?

2 A. Yeah, I mean, you know, I -- I will generally
3 sit somebody down and say, okay, let's start with

4 where you left from. What time was it? What was the
5 weather like? Who was on board? Where did you go?
6 What happened next? You know, tell -- tell me your
7 story.

8 As questions come up, we will wait for an
9 appropriate time and ask questions, you know, like I
10 said before, you know, when's the last time you did
11 maintenance on this thing that broke? Or how many
12 people were on board? Or did you feel tired? You
13 know, anything that we think may be relevant.

14 But the -- the general practice is to sort of
15 let people get their story out first.

16 Q. Okay. At this point, when you took the
17 statement from Mr. Andersson, you'd spent some time
18 with him wading to the boat and being on the boat,
19 correct?

20 A. Correct.

21 Q. Had you had much conversation with him at
22 that point?

23 A. I wouldn't exactly say we're friends. Beyond
24 -- beyond his case, no.

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1 Q. Okay.

2 A. We -- you know, we had some conversation
3 about what I thought about the damages to the boat,

4 and I had said that I would be recommending to
5 underwriters that I considered it as a -- a
6 constructive total loss. You know, we had discussed
7 how -- how salvage works. Beyond that, I -- I can't
8 recall any significant conversation, no.

9 Q. Did you have a sense, at that point, about
10 his mental state?

11 A. I had no reason to believe that he was not --
12 he was not compos mentis. I mean, I'm not sure -- I'm
13 not sure what you're asking me.

14 Q. Just if there was anything you noticed about
15 his mental state.

16 A. I didn't see any significant red flags
17 beyond, you know, someone who's been through a
18 somewhat trans -- a negative experience, a -- a -- I'm
19 searching for the right word. You know, losing --
20 losing your boat is never a pleasant experience.

21 Q. Would you consider the circumstances he was
22 in to be pretty highly stressful?

23 A. Absolutely.

24 Q. Okay.

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1 A. I don't think anybody could deny that.

2 Q. Do you know whether he spoke Spanish?

3 A. I believe -- I could be wrong here, it's been
4 a long time. I think he said he sort of spoke
5 survival Spanish, but not great Spanish. I think he
6 said something to that in his statement.

7 Q. Do you know whether -- and I'm going to go
8 back to your process.

9 When you're taking the statement, do you take
10 it down -- you said you -- you have handwritten notes;
11 and when you took those notes, did you take the
12 statement down verbatim?

13 A. Correct. Yes.

14 Q. And then -- so you took down every word that
15 was said?

16 A. Well, yeah, I mean, probably give or take.
17 It might not be perfect. I mean, I didn't take it
18 down like a court reporter. I can't -- I can't write
19 that fast, unfortunately. But I believe I've captured
20 all of the -- you know, all of the material that he
21 spoke, yes.

22 Q. Did you ask him questions during the
23 statement?

24 A. We did, yes. And I did not write down the

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1 questions.

2 Q. Okay. So there's -- could you -- is there a

3 way that you can tell, as you go through, it what --

4 let me ask you first.

5 Okay. So there's this handwritten note that
6 you created, is that exactly word for word what
7 ultimately ended up in your report?

8 A. Yes. Yeah. So, I mean, the -- the --
9 there's, sort of, check and balance on this is
10 obviously sending the -- I think you've got the e-mail
11 where it went, I think I saw it earlier, where I send
12 the statement that I have transcribed and said, you
13 know, if you think this is fair and accurate, would
14 you sign your name to it, and, if not, please let us
15 know.

16 Q. Okay. Was -- at that point in time, did you
17 talk to Mr. Andersson about how that statement would
18 be used or what the relevance of it was?

19 A. No, other than a recording of, sort of, what
20 happened, not at all.

21 Q. In your -- to your knowledge, did -- did you
22 have any sense of confusion or, sort of, mishmash in
23 the way that things were being said when Mr. Andersson
24 was giving his statement?

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1 A. Nope. No. I mean, like I said before, he --

2 he seemed like he was reasonably -- well -- put
3 together's not the right word, but he -- he was -- you
4 know, cognitively present. He -- he didn't seem
5 confused. He didn't seem particularly tired. He
6 seemed like he was very much there, present and -- and
7 alert with me.

8 Q. Did you have any conversations with anyone
9 other than Mr. Andersson to confirm the facts that he
10 said in the statement?

11 A. I don't believe so, no.

12 Q. Did you ever speak with Mr. Naranjo?

13 A. No.

14 Q. Okay. So let's go to some of these
15 documents. Give me a second.

16 (Pause.)

17 BY MS. NIEMEYER:

18 Q. I want -- I want to confirm, just before I
19 forget about this, I know from other communications
20 that Mr. Andersson did use Whatsapp.

21 Is it possible that you could've had Whatsapp
22 communications with him prior or --

23 A. It's --

24 Q. -- after -- during the claim?

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1 A. -- it's entirely possible. I wouldn't say

2 it's impossible. It's not my usual MO.

3 At the same time, you know, when we're --
4 when we're traveling around the Caribbean, there's not
5 -- there's not always a great line of communication.
6 If it's something that an insured chooses, and it's
7 readily available, we may use it. The issue that I
8 generally have with Whatsapp is that, when I travel,
9 data is incredibly expensive. Caribbean cellular
10 providers are not quite as great as the American ones,
11 and so I generally keep my data off so I don't rack up
12 a huge bill. So Whatsapp is -- is less than ideal,
13 because I'm limited to Wi-Fi on that.

14 Q. So what would be the most likely way that you
15 would communicate if it wasn't e-mail?

16 A. Verbally by telephone.

17 Q. Okay.

18 A. The roaming bill is, at least, controllable
19 on that one.

20 Q. Yeah, I mean -- (laughs). I was on a cruise
21 in Bermuda, and a local Wi-Fi picked up my phone and
22 started downloading things. I had a \$300 bill because
23 of it, so I understand.

24 A. I haven't left the country.

1 Q. We talked about --

2 A. Sorry.

3 Q. -- we talked about whether there were notes
4 on your phone or your computer.

5 Primarily, you said you take notes on paper,
6 correct?

7 A. Correct.

8 Q. And -- and if there was anything on your
9 computer, would it have been in the file that we
10 received?

11 A. That's correct.

12 Q. Okay. Let me just grab some of this fun
13 stuff for us to look at together.

14 (Pause.)

15 BY MS. NIEMEYER:

16 Q. All right. I'm going to sh -- can you see
17 this document now?

18 A. (Deponent viewing document.) I can, indeed.

19 Q. Okay. I'm showing you, for the record --

20 MS. NIEMEYER: And we will mark this --
21 we're on, what?

22 MADAM COURT REPORTER: Eighteen.

23 MS. NIEMEYER: Eighteen?

24 MADAM COURT REPORTER: Yes.

1 (Exhibit 18 marked for identification.)

2 BY MS. NIEMEYER:

3 Q. So Number 18 is the invoice. Give me one sec
4 so I get that in my notes, since this has been a
5 problem in the past (laughs).

6 Okay. So it's an invoice dated January 8th,
7 2020, and it begins with AB000052, ends with, I
8 believe it's 53. Yes.

9 A. (Deponent viewing exhibit.) Yup.

10 Q. To your knowledge, is this the only invoice
11 related to your work on this particular loss?

12 A. Related to my attendance, it's probably the
13 only invoice. I'm sure there would've been interim
14 invoices for the time spent reviewing and answering
15 questions later, since then. I think there's -- I
16 think there was another one in the file, at least one.

17 Q. Who were -- who were your contacts that you
18 spoke with or -- or communicated with on this loss?

19 A. That would've been Sarah Delacey-Simms at
20 Concept, probably Sarah [sic] Thomas as well,
21 obviously, Michael and his team, and our team in the
22 office here.

23 Q. Were Michael and his team involved in the
24 claims-handling end of it?

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1 A. No.

2 Q. When --

3 A. That would've been --

4 Q. -- do you recall them becoming involved?

5 MADAM COURT REPORTER: I'm sorry, can you

6 finish your answer and then you state your question

7 again, Michelle? I couldn't hear either of you. It

8 was at the same time, part of it.

9 THE DEPONENT: I do apologize.

10 A. I -- I said that -- that would've been much
11 later.

12 MADAM COURT REPORTER: Thank you.

13 BY MS. NIEMEYER:

14 Q. When do you consider the work that you did --
15 and, well, let me -- let me change that question.

16 You've been named as an expert witness in
17 this case, and -- and I -- I will not ask you a lot of
18 questions about that right now, because you'll do a
19 report and we'll want to talk about that.

20 But this particular question I -- I do want
21 to know the answer to, which is; do you have a
22 separate file in your office that -- so that your
23 surveyor work ends at a certain point, and then you
24 have a separate file for your work as an expert

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202

1 witness?

2 A. No. It's all the same file.

3 Q. Was it billed --

4 A. We -- we file --

5 Q. -- separately?

6 A. Yes, ev -- ev -- everything is billed
7 separately after this point. So the way that we file
8 things in this office is by the vessel, by the
9 incident, not by the client. The reason for that,
10 mainly, goes not so much to damage claims, but
11 condition and valuation claims where we get the same
12 boat that changes hands multiple times, and we need to
13 be able to reference the same boat.

14 Q. Okay. So I'm going to go back to the
15 question that I asked, just to make sure we have that
16 clear on the record.

17 This -- this invoice that we're looking at
18 right here, which is Invoice 423, and it's dated
19 January 8th, 2020 --

20 A. (Deponent viewing exhibit.) Correct.

21 Q. -- does that capture all of the work that you
22 did as a surveyor in relation on this claim?

23 A. (Deponent viewing exhibit.) I believe so.
24 That captures -- ahh, no, it doesn't, I don't think.

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1 We did -- we did two reports, one was on the
2 damage due to stranding, which would've come from this
3 invoice and my attendance in the Dominican Republic,
4 and we did another report about the navigational
5 limits of the policy, which was -- yeah, that was for
6 Mr. Goldman. So that would -- that would be on a
7 separate invoice, but, physically, we keep it in the
8 same file.

9 Q. Do you recall approximately when you did that
10 second one about navigational limits?

11 A. (Deponent viewing document.) Ahh, that is
12 dated September 4th, 2020.

13 Q. Okay. So part of what I'm -- I'm a little
14 confused about here is that, we will ultimately get to
15 an e-mail from you which is dated in the end of
16 January, in response to some correspondence, and it
17 doesn't appear that there's anything billing for that,
18 unless there's another invoice.

19 A. It's entirely possible that we just didn't
20 bill for it.

21 Q. Okay. So this here -- what we see here is,
22 we see travel from Tortola to Boca Chica on
23 December 29th -- 21st -- or on the 20th, it appears,

24 attend the vessel on the 21st.

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1 So does that clarify for you when you were
2 there?

3 A. (Deponent viewing exhibit.) Yup.

4 Q. Okay.

5 A. There was three days --

6 Q. All the times --

7 MADAM COURT REPORTER: I'm sorry.

8 BY MS. NIEMEYER:

9 Q. All the --

10 MADAM COURT REPORTER: There three days
11 -- there was three days. You said something after
12 that, sir.

13 THE DEPONENT: I apologize.

14 A. I said, there's three days billed there.

15 Q. Okay.

16 A. (Deponent viewing exhibit.) So it looks like
17 I traveled from here on the 20th, and I attended on
18 the 21st, but I was gone from the office for a total
19 of three days.

20 Q. Okay. And then the office time spent on the
21 report, you said, is two hours. That was drafting the
22 report?

23 A. (Deponent viewing exhibit.) Correct. And

24 that's --

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205

1 Q. Okay. So that includes everything;
2 Mr. Bailey's time and everybody's time on this was two
3 hours?

4 A. (Deponent viewing exhibit.) That's correct.
5 One thing to remember is that I -- you know, I'm
6 billing here for three days at a day rate where I'm
7 away. Obviously, there's a limited amount of time
8 that I'm on board the vessel, a lot of time where I'm
9 in transit. I -- I don't really think it's fair to
10 bill additional for my time when I can -- I can write
11 some of this stuff while I'm underway, or when I'm
12 sitting in a hotel waiting for a flight.

13 Q. Okay. And that totally makes sense.
14 Okay. So, then, you have expenses here,
15 the -- the airfare to get there, baggage fee, and
16 then, let's see, hotel accommodations for two nights.

17 So that would --

18 A. (Deponent viewing exhibit.) Yup.

19 Q. -- confirm that you stayed there overnight
20 the 20th and the 21st, correct?

21 A. Correct.

22 Q. Okay. So -- so is it your assumption, based

23 on this, that that follow-up work, you just, kind of,
24 considered it part of what had been already billed for

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1 because of the three days, and you billed a lot on
2 that front end?

3 A. Yeah, it's -- it's quite common that we will
4 do that, or we'll say, you know, it's a little bit
5 here. If turns it into more, then we'll bill for it,
6 but, otherwise, you know, it's -- -- it's just sort of
7 part of the service.

8 Q. Okay. All right. I'm going to close that
9 one then. Give me a second, I have to pop back and
10 forth again.

11 (Pause.)

12 BY MS. NIEMEYER:

13 Q. All right. This is more of a
14 let's-just-confirm-what-happened-here thing. All
15 right. So I've got a document open here. Let me just
16 get it in front of you.

17 All right. Can you see that document?

18 A. (Deponent viewing document.) Yes, I can.

19 Q. Okay. So this -- this document, for the
20 record, has Bates numbers AB000091 through, I believe,
21 it's 93.

22 Can you describe what this is?

23 A. (Deponent viewing document.) This is our
24 letter of instruction from Concept to Bill Bailey, in

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1 my office.

2 Q. Is that typically the way that you would be
3 assigned work?

4 A. Generally, as time goes on, there would be a
5 little bit more definition than that, but, often, you
6 know, in a -- in a somewhat emergency or rapid
7 situation, our clients would come to us and basically
8 say, get ready to mobilize and hash out the details
9 before we get there. So this is somewhat typical,
10 yes.

11 Q. Okay. So when you see -- there's a report of
12 survey and attached -- there's a group of PDFs
13 attached. We'll be going through some things, and you
14 can let me know what, you know, you believe was
15 attached. They came to us in an order.

16 A. (Deponent viewing document.) I can tell you
17 right now, if you'd like.

18 Q. Sure.

19 A. So the report of the survey would've been the
20 report from John Sands the --

21 Q. Mm-hmm.

22 A. -- (inaudible) evaluation from the
23 (inaudible) vessel.
24 (Technical difficulties.)

↑

208

1 MADAM COURT REPORTER: I'm sorry, excuse
2 me.

3 A. Um --

4 MADAM COURT REPORTER: Please -- please
5 stop. The report from John Sands, question, mm-hmm,
6 question, I couldn't hear what -- I mean, back to the
7 answer, I couldn't hear what you said, the first
8 couple of words, sir.

9 Can -- can you both really try to speak one
10 at a time? It's making it really frustrating for me.

11 THE DEPONENT: I do apologize.

12 A. So the report of survey would've been the
13 original condition and valuation from the purchase of
14 the vessel by John Sands, which came up in the
15 documents earlier.

16 The other attachments would have been the --
17 the -- a copy of the policy, the -- I've got it in the
18 -- the policy schedule. There were a couple of
19 documents provided by the insured, which looks like a
20 renewal application and probably the -- the claims
21 advice form from Concept.

22 But those are the sort of standard documents
23 that we'll get with an instruction as far as, here's
24 the policy, here is what the vessel is, or, at least,

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209

1 what the previous condition of the vessel is.

2 Q. Okay. And this -- the date on this is
3 December 18th, Wednesday morning, correct?

4 A. (Deponent viewing document.) Correct. And
5 I'm guessing that that is our time zone, because it
6 came from us. Because, of course, Concept is in the
7 UK, so we only generally get correspondence from them
8 in the morning, because our morning is their
9 afternoon.

10 Q. And -- and just to be clear, what time zone
11 are you in?

12 A. We are -- (laughs) -- so, at this very
13 moment, we are in Eastern Standard Time and, in fact,
14 arguably, we are on Eastern Standard Time the year
15 round. The point being that we do not have daylight
16 savings time here. We're too close to the equator.
17 So when you guys roll your -- your clocks back, in --
18 in New York or in Massachusetts, our clocks stay the
19 same.

20 Q. Just -- just to avoid confusion -- (laughs).

21 MS. NIEMEYER: Okay. So let me just ask
22 Laurie to mark this as exhibit 19.

23 (Exhibit 19 marked for identification.)

24 MADAM COURT REPORTER: It's all set.

↑ 210

1 MS. NIEMEYER: Okay. And I'm going to
2 move on.

3 (Pause.)

4 MS. NIEMEYER: This is starting to give
5 me all kinds of suggestions I want to give to Zoom.

6 MR. GOLDMAN: Michelle, would it be
7 convenient to take a break at 3:30?

8 MS. NIEMEYER: Only if it's convenient
9 for Laurie, because she needs a break soon anyway, I
10 can tell. Laurie, are you okay?

11 MR. GOLDMAN: I could do sooner if she
12 likes. That's fine.

13 MS. NIEMEYER: Laurie, how are you doing?

14 MADAM COURT REPORTER: Soon would be
15 good.

16 MS. NIEMEYER: I can kind of hear it in
17 your voice. I've got back problems, too.

18 (Off the record at 3:10 p.m.)

19 (Recess taken.)

20 (Back on the record at 3:16 p.m.)

21 MS. NIEMEYER: Okay. I'm going to mark
22 this as Exhibit 20, the next document. It has the
23 Bates numbers CF000014, and, I believe, 15 -- yes, 15.
24 (Exhibit 20 marked for identification.)

↑

211

1 MADAM COURT REPORTER: All set.

2 BY MS. NIEMEYER:

3 Q. And, Mr. Ball, I understand that you were not
4 included in this e-mail chain, so I'm not expecting
5 it's part of your communications, but the reason I am
6 bringing this one up is, you talked about duties that
7 were sent to the insured that were, essentially, the
8 guidelines that you, as well, had in handling the
9 surveys on claims for Great Lakes.

10 Is this the document you were talking about?

11 A. (Deponent viewing exhibit.) No. So the
12 document that -- it may be -- without reading it, it
13 may be the same thing. But the document I'm talking
14 about comes with the -- comes with the policy cover
15 (indicating) and it says claims guidance --

16 Q. Okay. All right.

17 A. -- so it (inaudible) in the event of a loss.

18 Q. I wasn't --

19 MADAM COURT REPORTER: Excuse me. Excuse

20 me.

21 BY MS. NIEMEYER:

22 Q. I wasn't sure what you meant --

23 MADAM COURT REPORTER: Hold on, please.

24 You cut out. You said, so something in the

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1 event of a loss. I couldn't hear the next -- the

2 words in between.

3 Can you please repeat exactly --

4 THE DEPONENT: Yeah.

5 MADAM COURT REPORTER: -- what you just

6 said, sir?

7 THE DEPONENT: Who cut out?

8 MADAM COURT REPORTER: You cut out, sir.

9 You said claim status, okay, all right, so -- and then

10 there were a couple of words I couldn't hear, and

11 then, in the event of a claim.

12 A. Okay. So -- so what -- what we work on, I --

13 you know, I -- I was saying that the words in this

14 document may be the same or they may not, but what --

15 what we reference in the, sort of, duties in the event

16 of a loss is the -- is the claims guidance part of the

17 policy paperwork (indicating). So this -- this

18 document in front of us is not the one that -- you

19 know, in this format, is not something that I'm --

20 I've seen.

21 Q. Okay. Let me just move on, then, because
22 that's not really relevant to you.

23 (Pause.)

24 BY MS. NIEMEYER:

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213

1 Q. Okay. Okay. We have an e-mail here. It has
2 Bates numbers MA000143 through 145. 145 is actually a
3 blank page.

4 And I'm just -- the only reason I'm showing
5 this to you is to ask whether this refreshes your
6 recollection at all about your delay and anything
7 about the timing of that inspection or when you
8 arrived?

9 A. (Deponent viewing document.) Well, it sure
10 does. If I remember correctly, I sent this from the
11 airport in San Juan. So, given that was at 12:30, you
12 know, give probably an hour on top of that, plus the
13 three hours I said, I means, I wouldn't have flown
14 until, you know, early to mid-afternoon. And based on
15 the taxi fee that was on the -- the invoice that you
16 just showed me, we had a -- a bit of a distance from
17 the airport to go as well, so I -- I would've been
18 there in the evening.

19 Q. Do you have any recollection at -- at that
20 time of the year, December 20th, about what time was
21 it getting dark? Did you have any daylight when you
22 got there?

23 A. I don't believe so, but I don't have specific
24 recollection. Our -- our days -- unlike your days up

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1 north, our days don't actually vary that much in
2 length. I mean, they do vary, but, you know, we don't
3 -- we don't sort of have light at eight o'clock at
4 night in the summer or anything. You know, six, 6:30
5 the sun's down here no matter what time of year, and a
6 little bit earlier in the winter.

7 MS. NIEMEYER: Okay. Laurie, clarify for
8 me, I have marked this, correct?

9 MADAM COURT REPORTER: Hold on one
10 moment. Let me just look up.

11 No, you did not mark this one. The last one
12 you marked was 20, so the next one would be 21.

13 MS. NIEMEYER: And 20 was? Tell me the
14 Bates number just so I don't mess this up for you
15 later.

16 MADAM COURT REPORTER: Hold on one
17 moment.

18 MS. NIEMEYER: Sorry, I didn't get it in

19 my notes.

20 MADAM COURT REPORTER: That's okay.

21 (Pause.)

22 MADAM COURT REPORTER: Twenty was CF00 --

23 I can't really see the screen very good, but I think

24 it is 0000014 [sic] and 15.

↑

215

1 MS. NIEMEYER: Okay. And 21 is going to

2 be this document, and it is, let's see, MA000143

3 through 145.

4 (Exhibit 21 marked for identification.)

5 MADAM COURT REPORTER: It's all marked.

6 MS. NIEMEYER: Okay. All right. Let's

7 go to the next one then.

8 (Pause.)

9 BY MS. NIEMEYER:

10 Q. Okay. Mr. Ball, can you see this document?

11 A. (Deponent viewing document.) I can see a --

12 what looks like a blank e-mail right now.

13 Q. Okay. And -- and the first page of it is a

14 blank e-mail, that's why it looks that way.

15 A. (Deponent nods head.)

16 MS. NIEMEYER: So I'm going to mark this

17 one as Exhibit 22.

18 (Exhibit 22 marked for identification.)

19 MADAM COURT REPORTER: It's all set.

20 MS. NIEMEYER: And it has Bates numbers

21 AB000198 through -- it doesn't -- I can't see a Bates

22 number that's a second Bates number, but these were

23 together when they were produced. It --

24 MR. GOLDMAN: Michelle, because --

↑ 216

1 MS. NIEMEYER: -- should be 199.

2 MR. GOLDMAN: -- it's a picture. The

3 Bates number is extremely small, but it is --

4 MS. NIEMEYER: Okay.

5 MR. GOLDMAN: -- I'm pretty sure it's

6 down at the bottom right, if you zoom in there.

7 MS. NIEMEYER: It's -- it's going to be

8 199, because it's only two pages.

9 MR. GOLDMAN: Let me verify on my

10 computer. Just a moment. One nine nine?

11 MS. NIEMEYER: Yes, AB199.

12 MR. GOLDMAN: Yes, that's correct,

13 it's 199. It's just because of the size of the --

14 that particular photo converted to a PDF was so much

15 larger than the others that the Bates stamp just wound

16 up very small, but it's 199.

17 MS. NIEMEYER: Okay.

18 BY MS. NIEMEYER:

19 Q. So my question to you, Mr. Ball, is just, do
20 you recognize this, and can you tell me what it is?

21 A. (Deponent viewing document.) It's a -- it's
22 a photo of a claim form, I guess, provided by
23 Mr. Andersson to -- it looked like me and Sam when you
24 scrolled up there. I recognize it, yes. It's -- I

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217

1 think it's in our files.

2 Q. Okay. And -- and it looks like it's
3 hand-dated December 20th, and it's saying that the
4 date of the incident is December 17th, correct?

5 A. (Deponent viewing document.) That looks like
6 a 19th to me, but it could well be -- sorry, yeah,
7 2019, December 17th.

8 Q. American.

9 (Laughter.)

10 BY MS. NIEMEYER:

11 Q. So -- okay. Let me just move on from that.

12 I just wanted to -- so is this the claim form
13 that -- when you mentioned you would typically compare
14 somebody's statement to the claim form? Is this what
15 you're talking about?

16 A. (Deponent viewing document.) Yes, where it

17 says provide details of the loss. Normally, there
18 would be more information than see e-mail to somebody
19 else or, of course, it would be accompanied by an
20 e-mail with that information. And that --

21 Q. And assuming there was an e-mail, did you --
22 would you have had that forwarded to you by them?

23 A. Yeah, I'm sure. If we did, it's in the file.
24 If we didn't, it's not.

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1 Q. Okay. All right. Let's go to the next one.

2 (Pause.)

3 BY MS. NIEMEYER:

4 Q. Okay. This document, it looks like you were
5 BCCed on it. It was produced in this case by
6 Mr. Andersson as MA000143 to 144.

7 My question to you is just whether you
8 recognize that document, first of all, and would've
9 received it in the ordinary course of business?

10 A. (Deponent viewing document.) Yes.

11 Q. Okay. And in this document --

12 MS. NIEMEYER: And -- and why don't we
13 mark this as Exhibit 23.

14 (Exhibit 23 marked for identification.)

15 MADAM COURT REPORTER: It's all set.

16 BY MS. NIEMEYER:

17 Q. Okay. All right. So the question I had for
18 -- about this, really, was just whether -- there were
19 some questions that were being asked, were you asked
20 to get involved in that type of thing where there were
21 questions being asked by Mr. Andersson, were you asked
22 to get involved in answering his questions at all?

23 A. In which questions?

24 Q. Questions by Mr. Andersson about things like,

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1 you know, in this case, how long does he need
2 security, and how long is he going to have to stay?

3 A. No, not really. In terms of answering the
4 questions, you know, I -- I'm always quite happy to
5 tell an insured what my expectation would be and,
6 obviously, what my recommendation to underwriters
7 would be, but I'm not there to make decisions on
8 underwriters' behalf. I always --

9 Q. Do you --

10 A. -- make recommendations.

11 Go ahead.

12 Q. -- do you recall whether you did give
13 Mr. Andersson any indication of what your
14 recommendation would be regarding this claim?

15 A. I have very little doubt that I would've told

16 him when we were on the board the vessel that I would
17 be recommending it to underwriters as a constructive
18 total loss.

19 Q. Did you give him any advice about what he
20 should do, related to salvage?

21 A. Well, he was there when we met with the
22 salvors, so we would have likely discussed the
23 different methods for salvage and what we would be
24 trying to salve had the -- had underwriters not

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1 accepted that it was a CTL. But as -- as far as
2 advising him, no, I -- I wouldn't say so.

3 Q. Did you consider that your role, to give that
4 kind of advice?

5 A. No.

6 Q. Who would you expect would advise the insured
7 about how to deal with that sort of thing, being
8 things like salvage?

9 A. That would likely come from Bill in our
10 office here.

11 Q. Okay. Okay. And -- and just -- I'm going to
12 point you down -- this was part of the e-mail chain
13 that was blind copied to you. At -- at this 19th of
14 December at 14:02, it appears, Mr. Andersson to
15 Ms. Thomas. It appears that he asked whether it was

16 acceptable to get the claim form completed after the
17 insurance assessment is done and talked about when you
18 were scheduled to arrive.

19 Does -- does that refresh your recollection
20 about whether there was any kind of arrangement
21 related to the claim form?

22 A. (Deponent viewing exhibit.) Sure. I mean, I
23 -- yeah.

24 Q. Okay. And -- and the response to that is

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1 also above this, saying, yes, that's fine, don't worry
2 about the claim form.

3 So does that give you the information you
4 need to know that he -- that's why he had not done
5 that?

6 A. (Deponent viewing exhibit.) Yup.

7 Q. Close that one. Let's go to the next one.

8 All righty. Just let me hold on one sec.

9 (Pause.)

10 BY MS. NIEMEYER:

11 Q. Okay. Let me just get you on to this
12 document here.

13 Okay. Is this the document you referred to
14 previously when you talked about an e-mail and the

15 statement?

16 A. (Deponent viewing document.) Yes. I believe
17 so. If you can scroll down, it will probably show an
18 attachment or show me --

19 Q. (Attorney complied.)

20 A. (Deponent viewing document.) Yes, so that is
21 the -- that is this in typed form (indicating).

22 Q. Okay. And we are going to want that
23 handwritten note.

24 A. Yup.

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1 MS. NIEMEYER: So we're going to mark
2 this as an exhibit, I guess it'll be what, 22?

3 MADAM COURT REPORTER: Twenty-four.

4 MS. NIEMEYER: Twenty-four. I'm bad at
5 this. You have to -- numbers and me, we're not real
6 good friends. So...

7 (Exhibit 24 marked for identification.)

8 BY MS. NIEMEYER:

9 Q. Okay. Exhibit 23 [sic] and it's an e-mail
10 dated December 23rd, 2019. The timing is somewhat
11 relevant here. It's 11:08 a.m.

12 Mr. Ball, are you aware -- this is coming
13 from Mr. Andersson to you, presumably, that's Eastern
14 Standard Time, but I don't know that for sure, do you?

15 A. (Deponent viewing exhibit.) Well, that --
16 that would have been pulled from my e-mail, I think,
17 so it should be in Eastern -- Eastern -- Eastern
18 Standard Time, I believe, or --

19 Q. Okay.

20 A. -- yeah, we're -- we're Standard all the way
21 --

22 Q. Okay. All right.

23 A. He would've been in Eastern Daylight.

24 Q. Yes. And this was actually Bates-numbered

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1 twice, because it was produced to us, and then it was
2 produced in response to a request for production back.
3 From your file, it was AB000214 through 216. We'll
4 use those numbers for simplicity's sake.

5 So this -- can you describe what's going on
6 in this communication?

7 A. (Deponent viewing exhibit.) So, after we met
8 at the cafe and I took this statement here, I e-mailed
9 him and just said, you know, can you confirm that this
10 is your statement, and would you put a signature to it
11 just so that we know it's your statement, along with a
12 couple of pieces of information I had asked questions
13 about, which he didn't necessarily have the answers to

14 while we were sat there.

15 So there's some questions about the fuel
16 tanks, which is something that we generally check on
17 in case of environmental damage and, obviously, before
18 salvage happens, the salvors generally want to know
19 how much fuel is on board.

20 We had asked about the contact details for
21 his crew member so we could try and get his story, but
22 we couldn't find him. And this is where we had asked
23 if we had his permission to take the GPS as well.

24 Q. Okay. So let's -- let's start with -- I'll

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1 just -- I'm going to look at this list here.

2 With relation to the crew member, if we
3 scroll up, and we look at use -- right now, in this
4 middle page, we're looking at -- we're looking --
5 actually, there's a response from Mr. Andersson to
6 you, and, then, below, is what he's responding to.
7 So, first of all, can you confirm, is that the case --
8 is -- is he responding above to the questions you
9 asked below?

10 A. (Deponent viewing exhibit.) That's correct.

11 Q. Okay. And it appears that you had asked
12 about contact information for Mr. Naranja in Number 1.

13 Did you confirm, or did anybody confirm the

14 spelling of the man's name?

15 A. No. We didn't -- we didn't get any further
16 than this with him, because there was no e-mail or
17 phone or any other contact details.

18 Q. Did you ever contact -- did you ever go --
19 circle back to Mr. Andersson and say, can you give us
20 his e-mail or his phone number?

21 A. No, we did not.

22 Q. Do you know if anyone at -- at Great Lakes
23 ever did? Or at Concept?

24 A. I have no idea, I'm afraid.

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1 Q. Do you know if Bill Bailey did?

2 A. I'm positive that he didn't.

3 Q. Okay. Do you have the capacity in your
4 office to look somebody up or to contact someone who
5 could help you if you have someone's passport number,
6 for instance, or their home address to figure out what
7 the missing links are?

8 A. I mean, beyond the Internet, no.

9 Q. Would it be your normal practice to speak to
10 the crew member who was on the vessel when you're
11 deciding or giving advice about a claim?

12 A. When we're assessing the claim, yes. We

13 want, you know, as many -- as many sources of
14 information as we can reach.

15 Q. Okay. Can you explain what you meant when
16 you said "when we're assessing the claim"? What did
17 you mean by that?

18 A. If I'm -- like in this instance, if I'm
19 trying to find out what happened, one of the things
20 that we see a fair amount is -- it's not even that
21 people aren't -- are intentionally dishonest, it's
22 that people remember things different ways, let's say.
23 And so, the more sources of information, the clearer
24 picture we can get.

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1 Q. The way that you said when we're assessing a
2 claim implied to me that you didn't consider yourself
3 to be assessing the claim; is that true?

4 A. In terms of surveying the loss and trying to
5 find cause of loss, that's absolutely what we're
6 assessing.

7 Q. Okay. Is there anything that you were not
8 assessing?

9 A. Well, the -- the -- the application and the
10 coverage of the policy beyond, you know, sort of, our
11 recommendations. I think what you're -- you're coming
12 around to is, were we acting as loss adjusters in this

13 case; is that correct?

14 Q. Not really. I'm just trying to understand,
15 the way that you said, "when we're assessing the
16 claim," it sounded like you were implying that you
17 might have done more in a different context.

18 A. Yes. Absolutely. Had we -- had we been
19 instructed to do more, we would've done more.

20 In a -- in a different context, for instance,
21 if the -- if the vessel had been salvaged and there were
22 repairs to be done, then we may want to know more
23 about what is incident related and what is not, for
24 instance. And the testimony -- or the statement from

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1 somebody that is obviously not the owner of the
2 vessel, that's just stepped on board the vessel is
3 very useful in that regard.

4 Q. In a circumstance like this when you have two
5 people on the vessel during the cau -- the course of
6 the journey, and you're trying to learn what the
7 detailed facts were, and you -- you just mentioned
8 sometimes people just remember things differently;
9 would you normally want to talk to both of those
10 people?

11 A. That's correct.

12 Q. Can you tell me, as you sit here today, why
13 there was no further attempt to get information from
14 Mr. Naranjo?

15 A. Once -- once underwriters had chosen not to
16 follow up with the claim, we weren't instructed to do
17 anything further. So, at this point, we don't really
18 know if it's in somebody else's hands or whether it's
19 our place to continue until we are instructed to
20 discontinue.

21 Q. Do you know if anyone at the insurance
22 company or at Concept, separately from you, made any
23 attempt to find or contact or speak with Mr. Naranjo?

24 A. I don't know. I have -- I haven't -- I can't

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1 remember what I said in my report, but I'm sure I
2 noted that he was there, and probably that I couldn't
3 make efforts to contact him. I'm sure we'll get to
4 the report in a minute.

5 Q. Okay.

6 A. You know, at that point, once we've issued
7 our report, it's -- it's sort of a okay, here's where
8 we stand, what are our next instructions, are there
9 next instructions? It varies, depending on the -- the
10 instruction in the case. But in this case, we didn't
11 feel that we had been instructed to go any further.

12 Q. If you had been in this situation, and I know
13 you're not an insurance adjuster, but Mr. Bailey is,
14 if your firm had been doing an insurance
15 adjustment-type of role where you were asked to make
16 the decision about a claim, would you have wanted to
17 have Mr. Naranjo's statement?

18 A. I would imagine that Bill would've wanted
19 that, yes.

20 Q. We've already discussed a little bit about
21 the environmental risks.

22 Is that why you were asking about how much
23 fuel was in each tank?

24 A. Partially. But as I'm sitting here reading

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1 it, I remember a second reason; and that was really to
2 determine just how much of this voyage had been under
3 sail, and how much of it had been under power. And so
4 we can see that -- that most of the fuel is still on
5 board. Obviously, there -- there were some questions
6 about making way to windward, which is a time where,
7 at best, you would want to motor sail, if not just
8 motor, and the fuel consumption is not reflected at
9 that.

10 Q. So what do you take away from that knowledge

11 or that information, exactly?

12 A. I take away that the majority of the voyage
13 was completed under sail. You know, at -- at no point
14 has Mr. Andersson stated that he stopped somewhere to
15 refuel or cleared into another country. So we know
16 that, you know, he -- he -- there's not a whole lot of
17 extra capacity in those tanks. So he -- he may have
18 left with -- well, anything above a hundred and fifty
19 gallons, but we know he can only carry 211 gallons,
20 based on this e-mail.

21 Q. The third thing you asked him about was you
22 mentioned that the underwriters wanted to take
23 possession of the GPS unit on board and asked for his
24 permission to do that.

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1 Why did you do that?

2 A. That's somewhat of our SOP. When we move
3 towards salvage, we would then take control of the GPS
4 so that we could look at -- if there was any data on
5 that, we could look at the track and just see if, you
6 know, sort of, if he was where he said he was.

7 Q. Would you want to see that if you were making
8 a decision based on navigational limits?

9 A. I'd want to know if there was any evidence
10 there, yes.

11 Q. Is it your understanding that that GPS was
12 never obtained by Concept or anyone on Concept's
13 behalf.

14 A. It's my understanding that it was left on
15 board. I don't think anybody obtained it. More than
16 likely, it was probably looted, but that's -- that's
17 speculation.

18 Q. Okay. And, just to confirm, you do not have
19 a recollection -- and based on our review of your
20 file, it wasn't there -- of having any documentation
21 forwarded to you in early January, which included
22 e-mails that were sent by Mr. Andersson to Concept and
23 numerous photographs of things taken off the vessel by
24 a salvor?

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1 A. I am not aware of that, no.

2 Q. Okay. Okay. And then the fourth question
3 you asked here was, you said, "I have attached a
4 written copy of the statement we discussed on Saturday
5 morning. Could you please take a look at it, and if
6 you agree return a copy with your signature certifying
7 it. If there are changes [sic], please don't hesitate
8 to let me know."

9 Is that what you were talking about when you

10 said you had sent it to him and asked for his comment?

11 A. Yes, that's correct. So that's the -- the
12 statement that we took at the cafe following our
13 attendance on the boat.

14 Q. Okay. And he says up here, other -- he says,
15 as for crew, Ron didn't -- he did not speak any
16 Spanish or at least he did not show it; otherwise,
17 your report seems okay as far as I remember.

18 A. (Deponent viewing exhibit.) Correct.

19 Q. Okay. And then it says he'll get the
20 document printed.

21 And why don't we go on to the next one,
22 because I just want to follow through this --

23 A. Okay.

24 Q. -- so we have your comments here.

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1 MS. NIEMEYER: Okay. So we're closing
2 that.

3 (Pause.)

4 MS. NIEMEYER: Okay. Let me just get
5 this -- okay. So I'm showing you this statement.
6 We're going to mark this as --

7 What are we on, 24?

8 MADAM COURT REPORTER: Twenty-five.

9 MS. NIEMEYER: -- 25 and we're at the

10 statement. It's two pages, and it begins with
11 AB000224, ends with AB0025. It was also marked as --
12 with MA numbers, again, because it was produced.

13 (Exhibit 25 marked for identification.)

14 BY MS. NIEMEYER:

15 Q. Do you recognize this as the identical
16 language to what's in that e-mail?

17 A. I do.

18 Q. Were any changes made?

19 A. (Deponent viewing exhibit.) I believe the
20 part about the crew speaking Spanish was made. I've
21 got a copy of what you've got on the screen in front
22 of me, and it says "The crew of the vessel did not
23 speak Spanish." I don't have the other one in front
24 of me, so I can't compare it side by side, but I have

↑

233

1 no knowledge of any other changes.

2 Q. Okay. And I'm trying to find where that --
3 where is it on there that it talks about the crew
4 didn't speak Spanish?

5 A. (Deponent viewing exhibit.) It's at the very
6 top of Page 2.

7 Q. Got it. Okay. "The crew of the vessel did
8 not speak Spanish."

9 And does this confirm your understanding
10 about whether Mr. Andersson spoke Spanish?

11 A. Yes.

12 Q. In what way?

13 A. (Deponent viewing exhibit.) Well, it says
14 that the crew didn't speak Spanish, and he signed it.

15 Q. Okay. Does -- I'm -- I'm just unclear what
16 that means, whether I -- and it's my understanding he
17 doesn't speak any Spanish, but you had said earlier
18 that you thought he did.

19 So my question to you was whether this gave
20 you any information about that at all?

21 A. No. I -- I said earlier that I was under the
22 impression that he spoke survival Spanish. When I say
23 survival Spanish, I mean enough to say hello, good-bye
24 and thank you and maybe ask for a beer or the

↑

234

1 bathroom.

2 Q. Yeah, cerveza, por favor.

3 A. Exactly.

4 (Laughter.)

5 A. But not enough to -- to adequately
6 communicate, you know, my boat is sinking, and I need
7 help, beyond, you know, mayday.

8 Q. When you took the statement -- and you

9 mentioned that you pretty much wrote down verbatim
10 while you sat there, what Mr. Andersson said, but you
11 said you thought -- you know, you had asked questions.

12 Do you have any recollection, as we sit here
13 today, where, in this conversation, you had asked
14 questions, and what he said was in response to your
15 questions as opposed to just being things he said?

16 A. (Deponent viewing exhibit.) Well, in terms
17 of speculating a little bit, if we just read down it,
18 I'm sure I can think of where I might have asked
19 questions. I mean, the -- the beginning is indicative
20 of my first question, which is, you know, tell me
21 where you started and where things went from there --

22 Q. Mm-hmm.

23 A. -- tell me how many people were on board and
24 what the weather was like.

↑

235

1 Q. Okay.

2 A. (Deponent viewing exhibit.) So that's pretty
3 much your first paragraph, and -- and then what
4 happened.

5 Q. Okay. So -- so we have that, we have the
6 rough -- the time that they left and, roughly, what
7 the weather was like, the wave height and the 18-knot

8 winds out of the east at that point in time. I -- I
9 want to ask you about this next paragraph where it
10 says the vessel motored east toward the lighthouse at
11 the end of Varadero and, once around the point, made a
12 northwesterly, heading with an intended destination
13 and course to steer of 50 degrees to St. Martin.

14 It appears to me, from your report, that you
15 understood that Mr. Andersson had intended to go on a
16 straight course, without tacking, from Aruba to
17 St. Martin; is that correct?

18 A. That's correct.

19 Q. Did you ever ask him to spell out what his
20 planned course was in detail?

21 A. No.

22 Q. Is it possible that he could've started at a
23 50 degree heading, but then turned east to clear the
24 Venezuelan islands?

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236

1 A. Not under sail, no. That would've been
2 straight into the weather, so you can't sail straight
3 into the wind. You have to tack off of the wind.

4 Q. Okay. So you're saying that a 50-degree
5 course wasn't possible to sail, because he would've
6 been sailing straight into the wind?

7 A. No. I'm saying to go east would not have

8 been possible. So I actually have a -- I pulled it
9 off of Wind Gear earlier, a record of the weather in
10 Bonaire on the 19th of May, and the wind was 16 knots
11 straight out of the east, moving forward into the next
12 day, whatever day it was, and it goes up to 20 -- 20
13 knots out of the east.

14 So, to go east, you would be going directly
15 into the wind. A sailing vessel can sail upwind to an
16 extent, depending on the boat. A catamaran like this,
17 I would expect in a -- in a reasonably calm sea to
18 make 40 to 45 degrees to the wind.

19 (Technical difficulties.)

20 MADAM COURT REPORTER: I'm sorry, you
21 broke up when you said to make, and then a number, 45
22 degrees to the wind.

23 Can you please repeat that number?

24 THE DEPONENT: Forty to 45 degrees to the

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237

1 wind.

2 MADAM COURT REPORTER: Thank you.

3 A. So the only way that a sailboat can go up
4 wind is to tack, so you zigzag your way up the wind.

5 Q. Okay. And -- and when you -- I -- I wasn't
6 clear, you said you have a record of whether, in

7 Bonaire, on 19th of May --

8 A. Sorry, I can't --

9 Q. -- I'm not sure what you mean --

10 A. -- that --

11 Q. -- by that.

12 A. Sorry. That's -- that's another date on the

13 top of the page. It's the 14th of December 2019.

14 Obviously, that's something I looked up out of

15 curiosity this morning. I'm happy to send that

16 through with my handwritten notes as well --

17 Q. Okay. Now, did you look that up while you

18 were doing the investigation for the claim?

19 A. No. I -- at the time I was writing the

20 report, I would've been relatively familiar with the

21 weather that had just come through and whether the

22 report was accurate or not. Given the time that's

23 lapsed, I didn't have the report in front of me, and

24 this was the quicker way to look up what the weather

↑

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1 had been.

2 Q. Okay. So the morning of the 14th -- the 14th

3 was the day that they left at 5:30 in the afternoon,

4 correct?

5 A. Correct. And the -- the weather station I

6 pulled this from is Bonaire. I know they left from

7 Aruba, but Bonaire is the -- is the, sort of, next
8 island to the east, so it's what they would've
9 encountered shortly into the voyage as they got a
10 little bit further from Aruba had they headed east.

11 Q. Okay. And you said, at that point, the wind
12 was coming out of the east?

13 A. (Deponent viewing document.) Correct. And
14 this records it as coming out of the east all the way
15 until 8 a.m. on the 15th, which is where the -- where
16 the report ends. I didn't look any further.

17 But, certainly, in terms of what
18 Mr. Andersson reports, in terms of wind strength and
19 wind speed and how it was relatively calm when they
20 left and the weather came up, this certainly reflects
21 that.

22 Q. Okay. Let me ask you a question on the -- so
23 you -- you state here in the next paragraph, "Shortly
24 after departure, it was found that the vessel was not

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1 making good way to windward and that the crew was
2 becoming seasick."

3 A. Correct.

4 Q. For the people who are not sailors who may be
5 reading this, can you explain what you mean -- what it

6 means when you say it's not "making good way to
7 windward"?

8 A. So it means that the vessel is not making
9 good way upwind. So what -- what I understand
10 Mr. Andersson as -- as having been doing is trying to
11 get as close to the wind as he could sail, which is
12 quite normal when you're sailing upwind, but he wasn't
13 making as much way as he thought he would. And that's
14 pretty understandable, given that he may have not --
15 may not have been aware of the Caribbean current,
16 which runs through at about a knot, and that would've
17 been against him, and the sea state would've been
18 slowing down the boat as well.

19 Q. Okay. And at this point, it says, "The
20 course of the vessel was adjusted to a more northerly
21 course to Ponce, Puerto Rico."

22 A. (Deponent viewing exhibit.) Correct. So --
23 so that would've steered him further away from the
24 wind, making the sails more efficient.

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1 Q. So is it your understanding that he -- he
2 headed directly toward Ponce or that he was -- did he
3 give you any more detail than that?

4 A. It's -- it's my understanding from this
5 statement that his initial intention was to sail

6 towards St. Martin, and when he couldn't make way
7 towards the wind, when he -- when he realized he was
8 sailing too close to the wind and he couldn't sail
9 that close upwind, he fell off the wind a little bit
10 and changed his course to Puerto Rico.

11 Q. So was it your assumption all along that he
12 had intended to sail in a straight line from Aruba to
13 St. Martin?

14 A. That was my understanding, yes.

15 Q. Did you ask him to clarify that, being a
16 sailor who understood that that probably wouldn't be
17 possible?

18 A. No. At the time, as I took the statement, my
19 brain went, well, that's pretty close to the wind,
20 but, you know, it could've been possible.

21 And now, having looked at the conditions that
22 he reported, the weather reports and, indeed, taking
23 into account the Caribbean current, which isn't
24 something I would normally think about unless I was

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1 actually planning a passage, as you would to do this,
2 I realized that that's -- it's just simply not
3 possible.

4 Q. So let's go to the next paragraph. It says,

5 although the weather was not forecast to deteriorate,
6 the winds picked up to an estimated 22 to 24 knots
7 with a heavier swell on Sunday the 15th. And then it
8 says, the crew member was incapacitated due to
9 seasickness. During Sunday the 15th and Monday the
10 16th, the wind picked up to approximately 25 knots
11 with gusts to 30 knots during squalls. The vessel was
12 sailed using a partially furled headsail and no
13 mainsail.

14 Did you get any detail or ask for any detail
15 about when -- because Sunday and Monday is a pretty
16 long period of time, when did those winds actually
17 pick up and the weather -- and the conditions
18 deteriorate?

19 A. Other than the day, no.

20 Q. Okay. So you know that it was sometime
21 during a 24-hour period which we call "Sunday"?

22 A. Yes, that's what he said.

23 Q. Okay. And then he mentions that -- he talks
24 about the generator working Saturday, Sunday and

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1 Monday; however, on Tuesday, it wouldn't start.

2 So that would tell you he was still underway
3 on Tuesday, correct?

4 A. Correct.

5 Q. Okay. "On Tuesday, the vessel arrived off
6 shore of Santo Domingo. Course corrections were
7 required to head further west in order to maintain as
8 comfortable conditions as were possible. Here, it was
9 discovered that the VHF radio on board would receive
10 transmissions, but could not transmit."

11 Did you ask any kind of detailed questions
12 about why he ended up so far off course from where he
13 intended to go?

14 A. No, but that seemed relatively apparent from
15 the inability to point to the wind.

16 Q. Did you ask why there was never a tack to
17 head further east?

18 A. Well, he wouldn't have been able to head
19 further east. He would've been able to go southeast.
20 So that would -- that would actually take him almost
21 perpendicular to his intended destination, or, at
22 least, what he reported to be --

23 Q. He --

24 A. -- his intended destination.

↑

243

1 Q. Do you know whether there was ever a wind
2 shift where the wind stopped being -- coming out of
3 the east and started coming out of the northeast?

4 A. No, but that would've taken him even further
5 west.

6 Q. Okay. Let's -- let's go to the next part
7 here. Actually, I want to ask you about the VHF
8 radio.

9 A. Sure.

10 Q. Did you talk to Mr. Andersson at all about
11 whether that radio was functioning at the time when he
12 left?

13 A. He did say that it was working when he left,
14 yes.

15 Q. And is it possible for things to break in
16 rough conditions?

17 A. Oh, absolutely. If you -- if you look at the
18 way that a -- a VHF radio is set up on a -- on a
19 sailing yacht, the majority of them keep the antennae
20 at the very top of the mast, which is, obviously, the
21 part of the boat that moves the most in a rough sea.
22 So, if the boat's getting beaten up, it's entirely
23 possible that the antenna would break.

24 Q. Okay. So in that kind of a situation and --

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1 and I'm going to say, when I say "situation," I'm
2 talking about when you have you leave port and the
3 conditions deteriorate, and, while you're on your

4 voyage, you start running into some very rough seas
5 and heavy winds and then damage happens.

6 Can that -- is that damage itself something
7 that you would consider evidence of unseaworthiness
8 when the boat left the dock?

9 A. Without -- without prior evidence of lack of
10 maintenance, no.

11 Q. Okay. And you mentioned in this -- in this
12 case, you didn't see evidence of lack of maintenance,
13 correct?

14 A. That's correct. I didn't -- I didn't go up
15 the mast, because the vessel was already structurally
16 impaired anyways. It -- it wasn't in a great position
17 for me to go up there.

18 Q. Okay. Then you -- it -- it mentions that --
19 when you say "the master," you're referring to
20 Mr. Andersson, correct?

21 A. No, the -- the mast, the mast on the boat.
22 The mast --

23 Q. Oh, no, I'm sorry. I'm looking at the --

24 A. -- on the boat.

↑

245

1 Q. I'm looking at the --

2 A. Oh, I see.

3 Q. -- on the report. I'm looking at the report.

4 So the report says in the next paragraph,

5 "The Master made a telephone call using his satellite

6 telephone to the broker." And it talks about finding

7 the best port of call for repair, and then it mentions

8 that the time was now approximately noon on Tuesday,

9 December 16th.

10 Do you see that?

11 A. (Deponent viewing exhibit.) Yup.

12 Q. Did you ever -- did you ever recognize that

13 if Saturday is the 14th, Sunday's the 15th, Monday's

14 the 16th, Tuesday's the 17th, that Tuesday wasn't the

15 16th?

16 A. I did not, but I do recognize it now.

17 Q. (Attorney laughs.) Okay. Was any of your

18 consideration of the course, or what you believed the

19 course to be, involving the fact that you believed

20 that this was a three-day trip, when, in fact -- or, I

21 should say, a four-day trip -- no, 14 to 16 would've

22 been a two-day trip, right?

23 A. Ahh, let's see. He left on the 14th, and he

24 arrived on the 17th, so that's a three-day trip.

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246

1 Q. But this -- this paragraph here says that he

2 arrived on the 16th.

3 Was it --

4 A. That's correct, but --

5 Q. Is it possible --

6 A. -- it is incorrect.

7 Q. -- is it possible that part of your
8 consideration in making your recommendation was that
9 you believed that the trip had been from the 14th to
10 the 16th?

11 A. No.

12 Q. It mentions, again, in the next paragraph --
13 it, again, mentions, on December 16th, the --

14 A. (Deponent viewing exhibit.) Yes.

15 Q. -- vessel arriving from Boca Chica, or
16 arriving offshore from Boca Chica, and it mentions, at
17 this point, the crew member was beginning to feel
18 better as the vessel had been in lee of the Dominican
19 Republic. Did you have any understanding, it --
20 earlier, it's mentioned that the crew member was
21 incapacitated at some point.

22 Did you have any conversation about whether
23 the crew member was capable of maintaining a watch
24 during the voyage?

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1 A. Yes. I was -- I was told that he was

2 incredibly unwell. That's not -- that's not verbatim,
3 obviously. We briefly discussed it, and the -- the
4 impression I was given, that he was bedridden.

5 Q. Did you def -- did you seek to clarify a
6 timeline on how long the crew member was sick like
7 that?

8 A. Well, he stated at the beginning that he
9 became sick as soon as they had come around the point
10 at, what, Varadero or shortly thereafter. So that was
11 right at the beginning of the trip. My experience, in
12 someone that's seasick for two and even three days, is
13 that they're not in great shape if they're still
14 seasick at the end of three days. You're getting into
15 -- into at least partial dehydration.

16 Q. When this says -- it says shortly after
17 departure, it was found the vessel was not making good
18 way and the crew was becoming seasick.

19 I think I asked you this question before, but
20 I'm going to ask you again; did you ask anything of
21 Mr. Andersson to confirm how far he actually went
22 before that was the case?

23 A. No.

24 Q. So is it fair to say that -- that you really

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1 don't know that happened right after he left?

2 A. Well, absolutely. I wasn't there, so all I
3 can go on is his statement.

4 Q. Did you ask any questions regarding whether
5 or not the crew member was participating and assisting
6 during the time frame when they were wading offshore
7 in Boca Chica?

8 A. I believe he was. I believe, at that point,
9 he was starting to feel just a little bit better,
10 because they were in the lee of Dominican Republic.
11 But, again, this is so long ago, it is difficult to
12 remember.

13 Q. When it says here that -- that it was -- he
14 felt better as the vessel had been in the lee of the
15 Dominican Republic for some time; are those your words
16 or Mr. Andersson's words?

17 A. Those are his words.

18 Q. So is it -- is it your understanding that --
19 that Mr. Andersson was completely single-handing this
20 vessel with no help for three days?

21 A. That is my understanding, yes.

22 Q. Would you find that kind of unusual?

23 A. Absolutely.

24 Q. Did you follow up with him and ask any kind

1 of questions to clarify that situation?

2 A. No, not after our report.

3 Q. Was it in your interest or your client's
4 interest to clarify that information?

5 A. Beyond this statement, I don't believe so,
6 no. I -- I believe we asked that question, and he
7 gave his statement.

8 Q. Okay. I want to get to this part where we
9 talk about the depth beneath the vessel rapidly
10 decreased, both engines were placed in power astern.
11 The vessel was taken onto a low-lying breakwater by
12 the swell. The breakwater was not shown on the
13 electronic charts on board. There were no paper
14 charts on board.

15 Did you write that, or did Mr. Andersson
16 write that or say it just like that when you were
17 talking to him in a cafe?

18 A. That was his response to my questioning as to
19 me asking was -- did it show up on your GPS? Did you
20 have any charts that showed the breakwater?

21 Q. Now, with regard to the GPS, I think we've --
22 we've confirmed that you did not check to see if there
23 was any chart chip in that GPS, correct?

24 A. Correct.

1 Q. Do you know what the expected use of this
2 vessel was?

3 A. Expected use in what regard?

4 Q. In regard of the cruising destination, the
5 area that it was intended to cruise?

6 A. Beyond what's written on the policy cover,
7 no, I don't know Mr. Andersson's history with the
8 vessel or what he intended to do with it.

9 Q. Are you -- did you ask whether there were
10 paper charts on board for areas that were not in the
11 Dominican Republic?

12 A. Yes, and there were paper charts for areas
13 that were not in the Dominican Republic.

14 Q. Okay. So when you say there were no paper
15 charts on board in this, you were really talking about
16 there were no paper charts on board for the area that
17 was hundreds of miles west from where he intended to
18 sail, correct?

19 A. That's correct.

20 Q. And that would be -- that would be true --
21 let me rephrase that.

22 Did you ask about the status of the GPS
23 regarding charts for the areas where Mr. Andersson
24 intended to sail as opposed to where he ended up due

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1 to the weather conditions?

2 A. No, I didn't. But there's not much point in
3 having a -- having a chart plotter if you don't have a
4 chart plotter for it. Obviously, he -- he had spent
5 some time in the Caribbean, and the chart card that
6 covers Aruba would generally cover all the way up to
7 the US.

8 Q. Okay. So -- so are you say -- now, when you
9 say that, I want to clarify and make sure we
10 understand.

11 You mentioned that there are different
12 charts?

13 A. (Deponent nods head.)

14 Q. And that the chips you -- you would purchase
15 chips for different charts, correct?

16 A. Correct.

17 Q. Okay. And he had two different GPSes on
18 board; one of them was a Garmin that was at -- that
19 was in the cockpit; and one was a Raytheon that was in
20 the nav station inside the salon, correct?

21 A. I've seen the Raytheon one in the salon. I
22 don't know where the Garmin one was, other than it's
23 listed on Jon Sands' report.

24 Q. Okay. Do you see a GPS outside in the

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1 cockpit?

2 A. No.

3 Q. Okay. Did you look for one?

4 A. No, because I found the one inside.

5 Q. If you're sailing the vessel and steering the
6 vessel, are you going to use the one inside when
7 you're looking for things that might bump in the
8 night?

9 A. No, but it's -- no, but it's quite common
10 that there isn't one outside. It's quite common that
11 when boats are built -- especially in this size range,
12 that people only put them inside. It keeps them out
13 of the elements. Much as the chart table would only
14 be inside, sometimes the display is only inside.

15 Q. Based on your knowledge of the GPSes that
16 were listed in that prepurchase survey --

17 A. Yeah.

18 Q. -- particularly, the Garmin that was listed,
19 is it your understanding that that Garmin would've had
20 a chip for the entire Caribbean, if it had a chip that
21 would've been good for St. Martin?

22 A. Yup. That's quite likely.

23 Q. Is it possible -- let's -- we're going to go
24 to your report. I've got a question for you about

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253

1 that but I'll -- we can do it better on the report.

2 A. Okay.

3 Q. Okay. So we also have here -- it looks like,

4 on that same day, Mr. Cottier, this is where -- where

5 we get -- Mr. Cottier waded out to the vessel?

6 A. (Deponent viewing exhibit.) Yup.

7 Q. And at this point, the master agreed to

8 evacuate the vessel.

9 So does that refresh your recollection about
10 how Mr. Cottier was connected to this situation?

11 A. Yes.

12 Q. Okay. And -- and it says, he and his crew
13 waded ashore and were greeted by officers from the
14 local Navy and police forces. The Navy took a
15 statement and the police walked the crew to the hotel.
16 Two security guards were arranged to stay on board by
17 the master to prevent looting as of the night of the
18 incident.

19 So does this indicate to you that
20 Mr. Andersson did what he could to protect the vessel
21 at that point?

22 A. (Deponent viewing exhibit.) Yes.

23 Q. And --

24 A. That's what -- go ahead.

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1 Q. -- having mentioned that the Navy took a
2 statement, did you ever make any effort to speak with
3 the local Navy people?

4 A. No, they generally don't release those
5 statements.

6 Q. Do you know if anyone from Concept attempted
7 to contact the local Navy?

8 A. I have no knowledge of that.

9 Q. Okay. And do you know whether Mr. Bailey
10 did?

11 A. I'm sure he didn't.

12 MS. NIEMEYER: All right. So I'm going
13 to close this down and open up a new document.

14 (Off the record at 4:18 p.m.)

15 (Recess taken.)

16 (Back on the record at 4:23 p.m.)

17 (Mr. Harvey no longer present at
18 deposition proceeding.)

19 (Exhibit 26 marked for identification.)

20 BY MS. NIEMEYER:

21 Q. Okay. So the next document that's marked
22 as 26, it's actually an e-mail and your report, but
23 they both serve their purpose. I'm just going to do

24 it together. So it's an e-mail from Mr. -- from Bill

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1 at -- on 23rd December 2005, which I have to assume is
2 Samantha Thomas' time of 8 p.m. And it says, "Here it
3 is and seasons greetings," and it is followed by the
4 report.

5 Is this the report that you wrote and
6 Mr. Bailey edited and signed, Mr. Ball?

7 A. (Deponent viewing exhibit.) It appears that
8 it is.

9 Q. Okay. So this is the report dated
10 December 3rd [sic], 2019, and the report begins on
11 Page CF000038 and --

12 A. (Deponent viewing exhibit.) Wait a minute.

13 Q. -- ends on --

14 A. (Deponent viewing exhibit.) It's dated
15 December 23rd.

16 (Technical difficulties.)

17 MADAM COURT REPORTER: I'm sorry, sir, I
18 couldn't hear you. You said, It's dated December, and
19 I couldn't hear the day.

20 A. I said, it's dated December 23rd, not
21 December 3rd.

22 Q. Oh, I'm sorry. I thought I said 23rd. I

23 might've cut out. CF000051 is the last page, and
24 we'll just go through that. Hold on.

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1 (Pause.)

2 BY MS. NIEMEYER:

3 Q. So let me ask you first if, Mr. Ball, this
4 report is the information you presented as a result of
5 your inspection of the vessel and your conversation
6 with Mr. Andersson to the claims adjuster at Concept?

7 A. (Deponent viewing exhibit.) Correct.

8 Q. Here it states under incident, "At some time
9 between approximately 1700 and 1900 on Tuesday,
10 December 16th, 2019, the vessel Melody struck a
11 breakwater."

12 A. (Deponent viewing exhibit.) I --

13 Q. As we --

14 A. (Deponent viewing exhibit.) I think It -- go
15 ahead.

16 Q. As we sit here today, we all know that's
17 the 17th, correct?

18 A. Correct.

19 Q. It's, then, followed by a -- it says,
20 Master's Protest, the following verbal statement was
21 taken from the master. And it starts -- goes -- "It
22 is reported that," and from that point, going down

23 through that page, it appears to be the same statement
24 that we just talked about.

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1 Is that your understanding?

2 A. (Deponent viewing exhibit.) It is, but it's
3 not, because I note at the top, it says it's been --
4 it's not been verified. So, I think, at that point,
5 maybe Mr. Andersson had not signed and suggested the
6 change regarding language. I'm just looking for the
7 -- the bit about speaking Spanish to see if that
8 change is in there. I don't think it is.

9 Yeah, that part is -- oh, no, the crew of the
10 vessel did not speak Spanish, so, perhaps, that is in
11 there. But I -- I -- I don't believe that this is the
12 time version of that signed statement, simply because
13 I've stated at the top here that he hasn't signed it
14 yet.

15 Q. Okay. Is there a reason that you forwarded
16 an unsigned statement in a report?

17 A. That's the information that we had at the
18 time, in order to get a report through, so that the
19 underwriters could, hopefully, start moving towards
20 making a decision.

21 Q. And as we go through this, I'm not going to

22 go back over that language, because it's pretty -- it
23 appears to be -- and I'll represent to you that I
24 compared the two; it appears to be the same or very

↑

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1 substantially similar --

2 A. It is.

3 Q. -- including the mis -- including the
4 mistakes about December 16th.

5 Did you ever have any conversation with
6 anyone at Concept clarifying to them that this
7 incident occurred a full 24 hours later than
8 December 16th?

9 A. When we started looking at the navigational
10 limits, that -- that error did come up, and we did
11 clarify the 17th.

12 Q. When you looked at those navigational limits,
13 though, that was during the litigation, essentially,
14 less than six months ago or about six months ago,
15 correct?

16 A. I believe so, yes.

17 Q. You said October, I believe?

18 A. (deponent viewing document.) The report is
19 dated September 4th.

20 Q. Okay. But is it fair to say, long -- long
21 after a decision was made on this and a lawsuit was

22 filed?

23 A. Correct. I believe so.

24 Q. Is it -- is it fair to state that, at the

↑

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1 time when a decision was made in late February of

2 2000, that this information is what the claims

3 adjuster had to work with?

4 A. I would believe so, yes.

5 Q. Okay. I want to look at these photographs

6 that you included on Page CF000041. One of them is a

7 satellite view of the breakwater, and one is a

8 Navionics chart. It looks like Navionics chart data.

9 The Navionics --

10 A. The --

11 Q. -- chart da --

12 A. -- the Nav -- the Navionics --

13 Q. Okay.

14 A. -- the Navionics chart data is -- is via a --

15 when I do the report and put the Navionics data in, I

16 pull that off of the Navionics app, just because it's

17 easy to pull it up and screenshot it, and those charts

18 are always updated. It -- it downloads the chart when

19 you look at it. It's live.

20 The next picture that you see is of a

21 two-year-old chart card on a private boat that has not
22 been updated, which also shows the breakwater.

23 Q. Okay. So I'm -- let's -- let's start where
24 we are now. So we have a satellite photograph --

↑

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1 A. Yes.

2 Q. -- and we can see in that satellite
3 photograph that there's definitely a difference in the
4 color of the water and -- and it appears that you can
5 -- you put an arrow where you could see -- what is
6 that arrow?

7 A. (Deponent viewing exhibit.) The arrow is the
8 location of the wreck site --

9 Q. And --

10 A. -- so that's the -- the approximated location
11 where Melody stranded herself on the reef.

12 Q. So you see that, and then you go to the one
13 below it, and you have where it says, "Breakwater
14 shown on the latest Navionics chart data," I have a
15 question for you about that photograph.

16 And the question is, I see that -- it appears
17 that land is yellow, correct?

18 A. (Deponent viewing exhibit.) Correct.

19 Q. And it appears that there are these land
20 masses of sorts (indicating), little islands or

21 something, that -- that are visible as yellow.

22 A. (Deponent viewing exhibit.) Yup.

23 Q. And then there's this green mass

24 (indicating), and it doesn't appear to have any kind

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261

1 of information about depth or anything related to

2 that.

3 Is that the standard way to show that there's

4 a hazard or a -- some kind of --

5 A. It is.

6 Q. -- a -- a reef?

7 A. Yeah, it -- it would show a reef in an area

8 where it's more than likely breaking the surface, so

9 it couldn't be surveyed in terms of its depth.

10 Q. Okay. The reason I've asked that is, I've

11 seen South Florida charts that show submerged sea

12 grass looking like that, and it's -- I wasn't sure, as

13 -- I wasn't sure if that was a standard or what the

14 average Joe would think --

15 A. Yeah.

16 Q. -- when they saw that green.

17 A. (Deponent viewing exhibit.) This is the

18 Navionics standard. What you do have, in the ability

19 to control there, is, you see that the -- the light

20 blue area --

21 Q. Yes.

22 A. -- you can actually add another area,
23 depending on how you program it. So you have the
24 option to program your chart plotter for the depth of

↑

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1 your vessel. So you can basically show a color
2 difference between good water and bad water.
3 Obviously, I haven't set that up, because I am on a
4 variety of different vessels.

5 (Technical difficulties.)

6 MADAM COURT REPORTER: I'm sorry, you
7 broke up, sir, after you said, you can show a
8 difference between the good water and bad water, and
9 then I couldn't hear you, sir.

10 A. I said, obviously, I haven't set that up,
11 because I use a variety of different vessels.

12 MADAM COURT REPORTER: Thank you.

13 BY MS. NIEMEYER:

14 Q. Okay. And then we have, on Raymarine here,
15 on the next page, two-year-old chart data taken from
16 our company vessel.

17 So that's your company's actual vessel, and I
18 believe you said that this is the next most recent
19 version of that Raymarine instrument, correct?

20 A. (Deponent viewing exhibit.) This -- this is
21 two versions since then. So the cover we saw denoted
22 an E120, which was then replaced by the E120W, which
23 has now been place -- replaced by the Axiom 12, which
24 is what we have.

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1 Q. Okay.

2 A. The -- the chart software is the very same.

3 Q. And in the E120, if you were to add chart
4 information, would you do that with a chip or an
5 upload or how would that have worked at that time?

6 A. No, it's on the chip. So, if they're not --
7 if they're not preprogrammed into the GPS when you buy
8 it, through which you would update a chip, they are on
9 the chip when you purchase the chip.

10 Q. Okay.

11 A. And you can have the dealer update the chip.

12 (Technical difficulties.)

13 MADAM COURT REPORTER: I'm sorry, and you
14 can have the something chip. I couldn't --

15 A. You can --

16 MADAM COURT REPORTER: -- hear the words

17 --

18 A. You can have the dealer update the chip.

19 MADAM COURT REPORTER: Thank you.

20 BY MS. NIEMEYER:

21 Q. Now, we have the next page here, Comments
22 Regarding Incident, and you say here, "While we
23 essentially -- we would essentially consider this to
24 be a case of navigational error, the crippled

↑

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1 communications and lack of adequate charts on board
2 has brought the issue of potential seaworthiness into
3 question. We also question the original --

4 A. Yes.

5 Q. -- course plotted and the coverage of the
6 policy."

7 You mentioned that you were not asked to be
8 adjusters here, is there a reason that you're looking
9 at coverage?

10 A. Really, just to fill the gap between
11 surveyors and adjusters. Generally, the -- the
12 communication with adjusters from us here in the
13 Caribbean and as surveyors isn't -- isn't as great as
14 it could be. And so, where we can fill the gap, we
15 will try and fill the gap.

16 Q. Were you asked to conduct your investigation
17 with an intention of finding things that could be used
18 to deny coverage?

19 A. Absolutely not.

20 Q. Is that what you were doing?

21 A. No, it's not.

22 Q. Did you look for facts that would have helped
23 with coverage, after you learned of things you thought
24 might eliminate coverage?

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1 A. I'm -- I'm not sure what you're pointing at
2 or what you're asking.

3 Q. Okay. When you learned of facts that, in
4 your opinion, might have indicated there was a lack of
5 coverage, did you look for clarification so that you
6 could determine, for sure, whether that was the case?

7 A. No, not particularly. I -- I don't -- I
8 don't suggest that we went out with the intention to
9 find facts that would deny coverage either.

10 Q. Okay. You talk about communications, and you
11 refer to the lack of a functional VHF on board as a
12 contributing factor. And you also mention that it's
13 possible the seas jostled the antenna or associated
14 wiring.

15 You do also say that, when supplemented by
16 the satellite and cellular telephones on board, you
17 would only consider that to be a factor to a ship or

18 in ship-to-ship communications, not ship-to-shore
19 communications, correct?

20 A. (Deponent viewing exhibit.) That's correct.

21 Q. Now, in saying that, do you consider having
22 those multiple backup systems adequate for a vessel
23 that's a -- a personal-use vessel intended to be used
24 essentially island hopping and near shore?

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1 A. No. Even for a personal vessel, that's
2 island hopping and near shore, I would expect it to
3 have a VHF radio.

4 Q. And this --

5 A. I do understand that it broke underway.

6 Q. This vessel did have a VHF radio, correct?

7 A. That's correct, yes.

8 Q. By the standards of catamarans you've worked
9 on, did this vessel have a functional amount of
10 communication equipment that you'd expect to see on a
11 boat like that?

12 A. Yes. When it left harbor, absolutely.
13 Obviously, through no fault of Mr. Andersson's that we
14 can see, when he arrived at his destination, some of
15 that equipment didn't work, and that may have
16 frustrated this incident.

17 You know, we note in his statement that he

18 speaks to waiting around for somebody to guide him
19 into Boca Chica and having difficulties with
20 communications there. The lack of a VHF, I'm sure,
21 contributed to that.

22 Q. Now, you then go on to Navigational
23 Impairment and you talk about "The area of most
24 concern with regard to potential seaworthiness is the

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1 procedure into a port in the dark with no local paper
2 charts, no cruising guide, no local knowledge, and
3 what appeared to be either defective, outdated, or
4 absent electronic charts." And -- and we've talked
5 about this.

6 The question I have for you here is, where a
7 vessel has been pushed out of its intended course, by
8 many miles, is it your expectation that that vessel
9 owner has had a failure, as far as seaworthiness or --
10 or is it your understanding that that is something
11 that, then -- you know, something caused the boat to
12 change course and end up in the wrong place? Let's
13 say, for wind conditions or weather that wasn't
14 expected, where do you draw the line? How do you
15 decide whether the incident is the catastrophic --

16 A. It --

17 Q. -- sort of, change in weather conditions or
18 whether the incident is what happens afterwards?

19 A. Weather changes and boats break. There's no
20 denying that. There are, of course -- there's always
21 an option to turn back or go -- or change course to a
22 harbor where there were charts, but that's -- that's
23 not even -- I think that would be, sort of, going out
24 another way to resolve the situation.

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1 I think the real thing here is, you don't do
2 -- pilot it, you don't enter a harbor that you don't
3 know, with no information in the middle of the night.
4 I see no reason that he couldn't have just dropped
5 anchor or -- or just hove to outside the harbor and
6 waited until there was daylight or waited until there
7 was assistance.

8 Q. And based on -- based on your understanding
9 of the situation, wasn't Mr. Andersson waiting for a
10 pilot to lead him into the harbor when this happened?

11 A. He was, but he was waiting incredibly far in
12 shore.

13 Q. Would you consider that negligence?

14 A. In the eyes of a professional captain, yes.
15 In the eyes of a recreational captain, I think it's
16 the act of a prudent mariner. What you're asking me,

17 in terms of if it's negligence, I may need to think
18 about that for a minute.

19 (Pause.)

20 A. I'm going to go ahead and say no at this
21 point --

22 Q. What would you call that? In that -- from
23 the perspective of a -- a recreational sailor who
24 believes he's waiting for a pilot to come, and that's

↑ 269

1 the safe way to get into the harbor; how to you
2 characterize what he was doing out there?

3 A. I -- I -- I mean, in one word, inexperience.
4 But -- but I understand that can be a synonym for
5 negligence. I'm not sure how I would answer that. I
6 know that's -- I know that's not the definitive answer
7 you're looking for, but I would have to pay that a lot
8 -- a lot more thought, I think.

9 Q. Now, we have a -- a section about Crew
10 Impairment. We've kind of already talked about that,
11 but I just want to touch on it again. You mention
12 that "The crew was reported to have been seasick
13 shortly after leaving Aruba and the situation is
14 reported to have continually worsened until arrival at
15 Santo Domingo."

16 Where did you get that it continually
17 worsened, because that's not in the written statement?

18 A. It's not in the written statement, no. I,
19 obviously, gathered that from my conversation with
20 Mr. Andersson. I didn't have any other information to
21 go on, but it's not recorded in the statement.

22 Q. Isn't that something you would've recorded in
23 the statement, given the circumstances, if it was in
24 there, if -- if it was part of what you took notes on

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1 and --

2 A. If -- if it's something that he said while I
3 was taking the statement, absolutely, it's something
4 that I would've reported in the statement. It my have
5 been something that he said on the beach or while we
6 were on the boat, I don't know. I mean, I certainly
7 didn't make it up out of thin air, and I'm not
8 suggesting that you're suggesting that I did.

9 Q. No. But -- but I'm -- I'm -- I'm questioning
10 it, because you sent him a written statement and asked
11 for his confirmation, but that statement did not
12 characterize the timing or the details of
13 Mr. Naranjo's condition over time in any specific way.
14 And I -- it's unclear to me what that exact
15 circumstance was, and it -- and it's unclear to me how

16 you got that information that was included here in --
17 in the report.

18 A. Yeah. I mean, honestly, after -- after this
19 period of time, I don't think I could give you a
20 definitive answer on that, other than, you know,
21 obviously, that was the impression I was left with
22 after seeing Mr. Andersson.

23 Q. Could that have been your assumption based on
24 the things that he said?

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1 A. I think that's very unlikely. I do my best
2 not to make assumptions in these cases.

3 Q. Isn't this --

4 A. I don't think I -- I don't think I would make
5 such a -- a broad and damning assumption just --

6 Q. -- isn't that --

7 A. -- out of nowhere.

8 Q. -- the kind of thing you would've wanted a
9 written confirmation of when you're including that in
10 the report?

11 A. Well, obviously, I agree with that now.

12 (Technical difficulties.)

13 MADAM COURT REPORTER: I'm sorry, you
14 sort of broke up.

15 Well -- can you please repeat exactly what
16 you just said?

17 A. I said, well, obviously, I agree with that
18 now.

19 MADAM COURT REPORTER: Thank you.

20 BY MS. NIEMEYER:

21 Q. Okay. So then you say, "We question the
22 decision not to turn back long before arrival in Santo
23 Domingo, but we also question the decision to proceed
24 beyond Santo Domingo to Boca Chica."

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1 What is your understanding about why
2 Mr. Andersson did not go into port at Santo Domingo?

3 A. My understanding is that he wanted to
4 continue to Boca Chica for repairs. I believe that's
5 what he said. Let me check his statement.

6 (Deponent viewing document.) Yes. He had
7 said that he wanted to continue to Boca Chica to
8 repair, I guess, the -- the generator or the VHF or
9 both.

10 Q. Do you have any understanding of where there
11 might have been a factor of an appropriate harbor for
12 his kind of boat and having people who could help him
13 into the harbor there?

14 A. You mean into Santo Domingo or into Boca

15 Chica?

16 Q. Into Boca Chica.

17 A. No. Not in comparison to Santo Domingo, no.

18 I mean, Santo Domingo offers safe harbor and, of
19 course, there would be people who could take him in
20 there as well.

21 Q. Did Mr. Andersson say that, or is that based
22 on your knowledge?

23 A. That's based on my local knowledge.

24 Q. Okay. Now, we mentioned the Coverage Area

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1 here. You mentioned that the coverage is based on the
2 vessel not exceeding 150 nautical miles offshore, and
3 you talk about the direct course from Aruba to
4 St. Martin and -- and then mention, "Although the
5 initial loss didn't happen 150 nautical miles [sic]
6 from shore, the voyage is arguably outside the bounds
7 of the policy as the vessel did not make port prior to
8 the loss," correct?

9 A. (Deponent viewing exhibit.) Correct.

10 Q. Okay. What is the relevance of the vessel
11 not making port prior to the loss?

12 A. Well, arguably, if the loss was part of a
13 voyage that exceeded the navigational limits, insurers

14 may not see it as covered. That's really their
15 decision to make, but if I -- if -- sorry, go ahead.

16 Q. Finish your answer.

17 A. No, I was -- I was going to say, if -- if I
18 look at -- I believe you are in receipt of a chart
19 which shows the courses through the Caribbean within
20 the navigational limits; is that correct?

21 Q. I'm sorry?

22 A. I said, I believe you are in receipt of a
23 chart which shows the course through the Caribbean --

24 MR. GOLDMAN: Andrew --

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1 A. -- within the navigational limits.

2 MR. GOLDMAN: -- no, those are work
3 product and have not be -- not been produced yet, but
4 will likely be produced as part of expert disclosures
5 soon.

6 BY MS. NIEMEYER:

7 Q. So I'm assuming --

8 THE DEPONENT: Okay.

9 BY MS. NIEMEYER:

10 Q. -- you're saying that under your -- based on
11 your understanding, it is feasible that this boat
12 could've had a voyage within navigational limits?

13 A. No, that is -- that is not my opinion at all.

14 The minimum course within a hundred and fifty nautical
15 miles of safe harbor, from Aruba to Santo Domingo, was
16 just over 775 nautical miles. That would -- over
17 three days, just taking into account our dating error,
18 that would cause this vessel -- this vessel would have
19 to be able to do, at least, 11 and a half knots,
20 average, to do that in that time period.

21 MR. GOLDMAN: You broke up, sir.

22 How many knots?

23 A. I actually have a --

24 THE DEPONENT: 11 -- 11 and a half, or

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1 thereabouts.

2 A. And so I have a -- a video of this boat
3 doing 11 knots on a beam reach, which means the wind's
4 coming from the side of the boat, that's its most
5 efficient point of sail, in a flat sea -- or it's
6 actually on YouTube, it's from when the boat was
7 listed for sail -- and it was doing 11 knots.

8 My experience with the Catana 47s is that,
9 while they are performance cruising boats, they are
10 still cruising boats. And once you've loaded them
11 with up with fuel and water and generators and all of
12 your -- all of your stuff, because you're living on

13 board, and you're not in a -- in a testing scenario,
14 they're a little bit slower. And I would expect, in a
15 fair sea on a beam reach, probably, about 10 knots out
16 of this boat.

17 Now, what -- what complicates that further is
18 the path within the navigational limits would take
19 you -- almost for the first leg of it, would take you
20 almost directly into the Caribbean current, which is a
21 knot against you. It would take you directly into the
22 wind, so you wouldn't be able to sail it, and we see
23 that Mr. Andersson didn't use a whole lot of fuel.

24 And, of course, it's into the sea, and he's

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1 already stated that the sea was incredibly rough. And
2 so there's no way that you would be able to make, even
3 close to, the necessary amount of speed on that
4 voyage, in these conditions, to make it in three days.

5 Q. How did you define the hundred and fifty
6 nautical miles from shore?

7 A. I took a compass from all of the, sort of,
8 closest points to the -- the Caribbean sea on each
9 island and I drew it out, and then I measured the --
10 the shortest course within those radii.

11 Q. Do you know what you used as the islands that
12 you defined as "shore"?

13 A. (Deponent viewing computer.) Pretty much all
14 of them (laughs). Offhand, I couldn't -- I couldn't
15 tell you which ones, because, of course, it doesn't
16 show me where the pointer dropped. But there are
17 probably at least 20 radii --

18 Q. Okay.

19 A. -- on the chart that I drew.

20 Q. Okay. Okay. And that's something that will
21 probably be produced as part of your expert discovery,
22 so we'll see that when we see it.

23 MR. GOLDMAN: Michelle, it goes without
24 saying, if we do produce it and he's an expert on that

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1 point, so that -- you can depose him again, obviously.
2 They'll be no -- no arguments about that.

3 MS. NIEMEYER: Okay. And that's fine.

4 I -- I totally understand. It was not produced at
5 this point.

6 BY MS. NIEMEYER:

7 Q. And is it your testimony, Mr. Ball, that this
8 was work that you did outside of your capacity as the
9 surveyor and as part of the report that you did for
10 Mr. Goldman in September?

11 A. That's correct.

12 Q. Okay. So I want to go forward a little here;
13 we talk about the cause of loss, navigational error
14 potentially caused by unseaworthy condition due to
15 lack of geographical information. It's kind of a
16 mishmash.

17 A. (Deponent viewing exhibit.) It is.

18 Q. So is it your -- is it your position that
19 Mr. Andersson's change in course, that caused him to
20 end up in so -- in the Dominican Republic instead of
21 in St. Martin, was caused by a lack of geographical
22 information?

23 A. No. No. No. I -- I'm speaking specifically
24 to landing on the breakwater, in that regard.

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1 Q. Does -- does the -- the change in course that
2 had to have happened at that point, lead to the loss?

3 A. Yes, I believe so. Obviously, if -- if -- if
4 he hadn't ended up at an unintended port, he,
5 hopefully, would've had charts to safely make it into
6 anchorage.

7 Q. We talk about salvage then, afterwards, and
8 this is where you gave the estimate about what it
9 would cost to salvage the boat, correct?

10 A. (Deponent viewing exhibit.) Yeah. And I was
11 obviously incorrect -- okay. I see it. I see 70,000

12 listed as a -- as a removal of wreck price, not a
13 salvage price. I had said earlier today that I
14 remembered a number of 70, and I guess that's where it
15 came from.

16 Q. So -- so is it fair to say my client did a
17 pretty good job when he got a thousand dollars from
18 the salvor, and the salvor promised to take the wreck
19 and take responsibility for everything?

20 A. Yes, except the -- the remainder of the wreck
21 is still there. I -- I get that, obviously -- I
22 didn't know that until you just said it. I -- I get
23 that he's managed to sidestep the liability, perhaps,
24 if there is such a thing in the Dominican Republic.

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1 Q. There's -- there's a -- there's a hold
2 harmless agreement.

3 (Pause.)

4 BY MS. NIEMEYER:

5 Q. Okay. So then we have "Sue & Labor," and you
6 mentioned the security guards, and you mentioned that
7 the cost was fair and reasonable. No personal injury.

8 Did -- did you ever at -- again, it's my
9 understanding you never had any follow-up
10 communication with Mr. Naranjo, so you wouldn't know

11 if he had any kind of injury or loss or any kind of
12 claim?

13 A. No, if he had -- if he had anything following
14 -- following me meeting him in the Dominican Republic
15 to report, I wouldn't know about it.

16 Q. Okay.

17 A. He didn't report anything at the time.

18 Q. And I'll represent to you, it's my
19 understanding there wasn't, but there -- it's -- would
20 that normally be something you'd want to know when
21 you're -- when you're doing the claim investigation;
22 whether a crew member, in this kind of circumstance,
23 would have any claim, potentially?

24 A. Yes, absolutely. If we go out for the survey

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1 following the loss, we will ask the question, you
2 know, do you have any injuries, do you -- you would
3 like to report any injuries. Obviously, once the
4 survey's over and it's handed to the loss adjuster,
5 then we would leave that with them because, you know,
6 if we're there -- if we're there to do a survey, once
7 that's done, that's done.

8 Q. Okay.

9 A. Unless we have an ongoing instruction, you
10 know, we -- we file our report then here you go, we're

11 out.

12 Q. Right.

13 A. It's a little frustrating, because we don't
14 know what happens, how cases are resolved.

15 Q. Okay. So you've mentioned now -- you've
16 mentioned the environmental damage part, that there
17 was a risk. I don't think we need to really go there
18 in any major way.

19 Damages and Recommendations: Essentially --
20 and I'm just going to, sort of, summarize this; is it
21 fair to say that your -- your opinion was that the
22 boat was a constructive total loss?

23 A. That's correct.

24 Q. Okay. And you mention an estimated cost of

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1 repair, which exceeded the value of the vessel by
2 about a hundred thousand, correct?

3 A. (Deponent viewing exhibit.) Yes. And
4 that's -- that's the very -- you know, we note below,
5 that's preliminary-nature only, simply because, every
6 now and then, somebody wants to contest it and we go,
7 that's what we can see right now, there'll be more.

8 Q. Okay. And then there's a certification by
9 you, "The statements in [sic] fact contained in this

10 report are true and correct. The reported analysis,
11 opinions, and conclusions are limited only by the
12 reported assumptions and limiting conditions, and are
13 my personal, unbiased professional analyses, opinions,
14 and conclusions. I have no present or prospective
15 interest in the vessel," et cetera. I'm not going to
16 read all of it.

17 A. (Deponent viewing exhibit.)

18 (Deponent nods head.)

19 Q. Is it your position, as you sit here today,
20 that, based on the knowledge you have today, that
21 that's still true?

22 A. Correct. Yes.

23 Q. Is there anything, as you sit here today,
24 that you would change in that report, based on the

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1 knowledge have you now as opposed to before?

2 A. Well, I would certainly change the dates that
3 were wrong. Without reading the report again, I can't
4 -- I can't think of anything glaring that I would
5 change, based on the information that I had at the
6 time.

7 Q. Okay. And then these photographs --

8 A. (Deponent viewing exhibit.) These are --

9 Q. -- presumably are --

10 A. (Deponent viewing exhibit.) These are --

11 Q. -- photographs from your inspection, correct?

12 A. (Deponent viewing exhibit.) Correct. And
13 these are the same -- the same batch of photographs
14 that we reviewed earlier.

15 MS. NIEMEYER: Okay. Okay. So we're
16 done with that one. We're not done. We're done with
17 that one. We're getting close to done. We're --
18 we're done with the big stuff. Let me just take a
19 peek at what I've got left here. I can get rid of
20 that one.

21 (Pause.)

22 BY MS. NIEMEYER:

23 Q. Okay. Let me just -- I want to give you
24 another document to look at here.

↑ 283

1 MS. NIEMEYER: And what are we on now,
2 Exhibit 26?

3 MADAM COURT REPORTER: Yes.

4 MS. NIEMEYER: Okay. Let's mark this
5 as 26. And it's an e-mail, it's five pages long. It
6 starts with Andersson. It's CF000144 and it's
7 followed by correspondence. The e-mail's a cover
8 e-mail, one page. It's followed by correspondence

9 dated January 15th, 2020 from Mr. Andersson to Sarah
10 Delacey-Simms, and the last page of the collective
11 document is CF148.

12 (Exhibit 26A marked for identification.)

13 BY MS. NIEMEYER:

14 Q. This e-mail is requesting comments from Bill,
15 related to the attached correspondence.

16 Mr. Ball, did you ultimately end up being the
17 person who was asked to give that response?

18 A. (Deponent viewing exhibit.) I don't recall.
19 I do have a copy of the letter that you've just
20 referenced, but I don't recall giving a response to
21 it.

22 Q. Okay.

23 A. And I know --

24 Q. Now, let me just say, I'm going to -- we'll

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1 get to that, but you -- okay. So Bill was asked, on
2 January 27th, to respond to the correspondence from
3 the 15th of January.

4 Do you have any recollection of receiving
5 that 15th of January correspondence any time prior to
6 the 27th of January?

7 A. No, I don't have any recollection of that.

8 That would've been -- I mean, in honestly, January

9 2020, I probably couldn't tell the difference between
10 December and March 2020 --

11 Q. Had there been --

12 A. -- you know, it's quite a --

13 Q. -- had -- had there been a prior transmission
14 of that document, would you have had it in the e-mail
15 records that you provided?

16 A. That's correct. Yes.

17 Q. Okay. So you mentioned you did have a
18 recollection of seeing this letter?

19 A. That's correct. I don't know -- I don't know
20 when I first saw it, but I have it here (indicating),
21 so I've definitely seen it.

22 Q. Okay. Did you review this correspondence in
23 detail?

24 A. Not to my recollection, no.

↑

285

1 (Deponent viewing exhibit.) Oh, we may have
2 done -- let's have a look. Yeah, I believe I've seen
3 this before, I just can't remember when.

4 Q. Okay. I'm not going to go into this in great
5 detail because you -- you responded to it, but I do
6 want to go into --

7 A. I -- I responded to it or Caribbean Marine

8 Surveyors responded to it?

9 Q. We'll look at a document and you can tell me.

10 A. Okay.

11 Q. I want to look at this part about the
12 navigational limits in the response. And -- and
13 Mr. Andersson discussed his intended course and it --
14 and discussed in more detail, his recollection of --
15 of the course.

16 Do you recall looking at that?

17 A. (Deponent viewing exhibit.) I do recall a
18 change -- well, a -- a different statement to what I
19 had collected. I thought that that was in the court
20 documents, but that may have been in here as well or
21 vice versa. So, yes, I do remember, at some point, a
22 statement that was contradictory to what I believed I
23 had collected being brought forward.

24 Q. Would you consider what you see here

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1 contradictory to what you put in the statement that
2 you asked Mr. Andersson to sign on the 23rd?

3 A. (Deponent viewing exhibit.) Yes. I believe
4 -- I believe, if I remember correctly, there are a
5 number of points in here that contradict that
6 statement.

7 Q. Do you consider it contradictory or is it --

8 is it more detailed?

9 A. Again, if I remember correctly, there were
10 some things that I would consider to contradict it.
11 I'd have to put them side by side and go through it
12 all again to confirm.

13 Q. Did you ever talk with Mr. Andersson, when
14 you saw this letter, to ask further questions and
15 clarify any of that information?

16 A. No.

17 Q. Were you asked to speak with Mr. Andersson
18 about it?

19 A. No.

20 Q. Were you asked to provide your -- your
21 opinion about how the new factual information affected
22 your report?

23 A. I'm sure that would be the purpose of sending
24 it.

↑

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1 MS. NIEMEYER: Okay. So let me go to the
2 next document.

3 (Pause.)

4 MS. NIEMEYER: Okay. We're going to mark
5 this one also as Exhibit 27.

6 (Exhibit 27 marked for identification.)

7 MADAM COURT REPORTER: All set.

8 BY MS. NIEMEYER:

9 Q. It is a two-page e-mail. It has Bates
10 numbers CF000152 and 153, and it is dated
11 January 31th, 2020, from Mr. Ball to
12 Ms. Delacey-Simms.

13 Mr. Ball, does this refresh your recollection
14 about whether you responded to that correspondence?

15 A. (Deponent viewing exhibit.) It does, and I
16 clearly did.

17 Q. Is there any information that you sought
18 beyond that written correspondence that fed into what
19 you provided in this e-mail?

20 A. No.

21 Q. Okay. So there was no further investigation
22 to confirm any details or to ask any questions of any
23 witnesses or anything like that, correct?

24 A. That's correct.

↑

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1 Q. When you wrote your original report, I
2 believe we established that it was your understanding
3 that Mr. Andersson's crew member became a com --
4 seriously seasick almost immediately after leaving the
5 harbor; is that correct?

6 A. That's correct.

7 Q. Did you -- when you met with Mr. Andersson
8 and that was your understanding, did you ask him why
9 he would not turn around if he was -- he had just left
10 the harbor and he had a sick crew member?

11 A. I did not, no.

12 Q. Did you ever ask anything about -- I believe
13 I asked this, but I want to confirm it, about whether
14 Mr. Naranjo did stand watch during the voyage?

15 A. I did not. When I -- when I understand that
16 somebody's incapacitated, I understand that they're --
17 they're not able to hold the watch.

18 Q. Is it possible to recover from a level of
19 seasickness that makes you incapacitated when the
20 vessel has changed attitude toward the wind and waves?

21 A. Yes, absolutely.

22 Q. Did you ask Mr. Andersson whether
23 Mr. Naranjo's illness changed as he changed course?

24 A. Well, short of changing course more than 90

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1 degrees, it wouldn't have made much of a difference.
2 It's the difference between going into the weather or
3 going with the weather and, of course, as he reports,
4 almost his entire trip was into the weather, because
5 he was doing what we called pitching, he was trying to

6 get as close to the wind as he could, which is why he
7 ended up in Santo Domingo.

8 Q. Does it say that in the statement that he
9 signed?

10 A. The word pinching, definitely not, but it
11 says that he was trying to head upwind and he
12 eventually got blown off. And, certainly, a course
13 change from St. Martin to Puerto Rico and then to
14 Santo Domingo suggests that he was trying to hug the
15 wind as close as he could.

16 Q. Did you look at weather reports, other than
17 the one you mentioned that was on the 14th, into the
18 morning the 15th, did you follow continuous weather
19 reports to see what the weather looked like during the
20 course of the voyage and see where he was in relation
21 to the wind?

22 A. I did not. I -- I would suggest that the
23 Caribbean isn't that big of an area, so it won't be
24 vastly different. There will be differences, but not

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1 vast differences.

2 Q. As you sit here today, do you know whether
3 there were any wind shifts after that morning report
4 that you had from Bonaire?

5 A. I do not. No.

6 Q. And I think we established before, you --
7 it's not certain, based on what you know, when exactly
8 Mr. Naranjo became ill, correct?

9 A. Yeah, we -- there are a number of different
10 statements, I suppose. Obviously, Mr. Andersson has
11 signed one that said he became sick relatively
12 quickly. That's the letter which you just referenced,
13 which says something slightly different. And then, I
14 believe, there's a -- a court report, which either
15 references that letter or says something different
16 again.

17 Q. I think, with regard to the part of this
18 where we talk about -- you talked about the VHF radio
19 and the Garmin charts or the -- the Raymarine charts,
20 is it fair to say we've -- we've covered that
21 information previously when we were talking about your
22 report?

23 A. I believe so, yes.

24 Q. You do mention here, something about a -- you

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1 said, at the end of the paragraph numbered six, you
2 say, "As the systems are not approved ECDIS systems
3 with independent power supplies, we would argue that
4 the absence of paper charts to supplement the

5 electronic charts affects the vessel's potential
6 seaworthiness negatively."

7 Do you see that?

8 A. (Deponent viewing exhibit.) Yes, so where
9 does the (inaudible) -- a commercial vessel would be,
10 which, you know, just as far as --

11 (Technical difficulties.)

12 MADAM COURT REPORTER: I'm sorry. Before
13 you said -- after you said the -- a commercial, I
14 couldn't -- the word was broken up.

15 Can you please start over again?

16 THE DEPONENT: Sure.

17 MADAM COURT REPORTER: Sorry.

18 A. Sure. We're just a commercial vessel, and
19 just using that as a -- as a measure of, sort of, good
20 practice, electronic -- ECDIS means Electronic Chart
21 Display and Information System, so it's a fancy name
22 for a chartplotter on a commercial boat. The only way
23 in -- in --

24 (Noise interruption.)

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1 MS. NIEMEYER: The Google product, that
2 shall not be named, heard you say something --

3 THE DEPONENT: Okay.

4 MS. NIEMEYER: -- and decided it heard

5 its name.

6 THE DEPONENT: That's okay. I'll
7 continue.

8 (Laughter.)

9 A. So, on -- on a commercial vessel, in most
10 flag states, electronic chart information systems are
11 allowed in lieu of paper charts, but only in the
12 instance that there is 100 percent redundancy and a
13 separate power supply. So the point that we were
14 getting at there is that, most insurers, a lot of flag
15 states, don't recognize electronic charts as having
16 appropriate charts on board.

17 As far as what the US Coast Guard allows, I
18 -- you know, we'd have to reference the CFRs to figure
19 that out, but, certainly, in terms of good practice, I
20 -- I, myself, would never rely on an electronic chart
21 alone, simply because you never know what's going to
22 happen. You don't know if you're going to get hit by
23 lightning, you don't know if you're going to lose
24 power, all sorts of -- you know, it's a boat, it

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1 breaks. And so, call me an old soul, but paper charts
2 are kind of the way to go, and that is an accepted
3 industry practice.

4 Q. Okay. And -- and this paragraph does not say
5 to the underwriter that Mr. Andersson did have paper
6 charts, just not paper charts for the Dominican
7 Republic, correct?

8 A. That's correct.

9 Q. So -- and -- and as you look at this right
10 now, could you imagine that it's possible that the
11 underwriter understood what you said to imply that
12 there were zero paper charts on board and that the
13 boat only had a chartplotter?

14 A. Yes, I could understand that somebody might
15 interpret it that way, absolutely.

16 Q. Did anyone ever ask you to clarify that?

17 A. No.

18 Q. So it's reasonable to understand that they
19 may have relied upon a misunderstanding, being that
20 there were no charts at all on the boat, and that
21 might imply that the boat was unseaworthy?

22 A. That -- that's -- that's a possible
23 assumption that they could've made, yes.

24 Q. Okay. Okay. I'll close this one down.

↑

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1 We're getting there.

2 (Pause.)

3 MS. NIEMEYER: Okay. Let me just -- I'm

4 going to share another one. Let's mark this one as
5 28.

6 (Exhibit 28 marked for identification.)

7 MADAM COURT REPORTER: All set.

8 BY MS. NIEMEYER:

9 Q. It is an e-mail dated 19 February 2020, from
10 Ms. Delacey-Simms to Mr. Andersson. It has Bates
11 numbers CF000157 through 158.

12 Mr. Ball, you are not listed on this, but
13 I -- I just wanted to ask you about your understanding
14 here. So this e-mail chain begins with an enclosed
15 res -- response to the December 27th letter from
16 Mr. Andersson. He then forwards that message on the
17 -- it looks like the 28th of January, so a month and a
18 day later, and asks for confirmation of the receipt of
19 that e-mail. And then the response he gets is that
20 Ms. Delancey -- Delacey-Simms can confirm receipt.
21 And he then turns around and, on February 19th, which
22 is about a month later, says, when can you return my
23 GPS unit? This being based on the understanding from
24 the communications that the insurance company had

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1 taken or would be taking the GPS unit.

2 Now, the response that Mr. Andersson received

3 was, "Thank you for your e-mail. I would suggest that
4 you contact the surveyor."

5 Mr. Ball, does that indicate to you that it's
6 possible that Ms. Delacey-Simms believed that you had
7 taken possession of the GPS?

8 A. It's possible. I -- I would suggest that it
9 definitely means that she thinks we would be the
10 people that would know if anybody had it --

11 Q. Okay.

12 A. -- and I believe --

13 Q. Never --

14 A. -- in the --

15 Q. Do you recall -- outside of the e-mails that
16 -- that we've received, do you recall any
17 communications by telephone with her about the GPS or
18 whether you were going to be getting it?

19 A. No. I was --

20 Q. Okay.

21 A. -- I was just about to touch on -- on -- that
22 there are other e-mails in the pack between us and
23 Mr. Andersson clarifying that we didn't have the GPS.

24 MS. NIEMEYER: Okay. Let's go pop out of

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1 full screen again. Okay. I'm not going to bother
2 with the policy with you, because you weren't the

3 claims adjuster.

4 I'm going to just ask you, Laurie, Exhibit 10
5 from Mr. Usher, was that same response that we just
6 talked about as Exhibit 27. Could you strike that?
7 Don't mark it as 27 and we're just going to call that
8 Exhibit 10?

9 MADAM COURT REPORTER: Okay.

10 MS. NIEMEYER: Is that -- do you
11 understand what I'm saying?

12 MADAM COURT REPORTER: Yeah.

13 (Exhibit 27, CF000152 to CF000153,
14 withdrawn.)

15 MS. NIEMEYER: I just -- I -- I had two
16 copies of it in here for some reason. Let's see.
17 What is this? All right. Share screen.

18 BY MS. NIEMEYER:

19 Q. Okay. Mr. Ball, can you see this
20 correspondence of March 2nd, 2020?

21 A. (Deponent viewing document.) I can, indeed.

22 Q. And just for the record, this was marked as
23 Exhibit 9 in Mr. Ush -- Usher's deposition, and it's a
24 denial letter from Sarah Delacey-Simms to

↑

297

1 Mr. Andersson.

2 And my only question to you, Mr. Ball, on
3 this is, were you asked to contribute in any way or to
4 participate in the drafting of this letter?

5 A. (Deponent viewing exhibit.) No.

6 Q. Were you involved in any way in the decision
7 about whether or not to accept the claim?

8 A. No. I don't believe so. Beyond -- beyond
9 our report and our -- the information we provided, no.

10 Q. And you see that the date of loss is listed
11 as 16 December 29 -- 2019?

12 A. (Deponent viewing exhibit.) I do.

13 Q. Was there ever any time where you became
14 aware that the company had -- had a confused
15 perspective on the date of loss that seems to have
16 continued into the file and onto correspondence?

17 A. Yes, as -- as -- as this became a litigation
18 issue, obviously, it was raised. We -- we became
19 aware and I -- I think it originates from that very
20 first statement that just, sort of, got carried
21 through.

22 And -- and to be clear, I don't think any of
23 us were obviously -- you can see the date name as
24 well. I don't think any of us were really of the

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1 impression that this was a two-day voyage. We just

2 got the numbers wrong.

3 Q. Are you positive about that?

4 A. I'm -- I'm -- I mean, I'm not -- how hundred
5 percent is a hundred percent?

6 Q. Okay.

7 A. I -- I -- let's say I'm 80 percent positive
8 about that.

9 Q. Okay. And -- and from your own perspective,
10 that's the case, but I guess my question is; are you
11 positive that that's the case with regard to the
12 decision-makers who looked at the claim in the end and
13 made a decision about it?

14 A. Well, I -- I can't speak to somebody else's
15 thoughts.

16 MS. NIEMEYER: Okay. Okay. We're going
17 to mark as, Exhibit 27, this e-mail of -- it's dated
18 27 December 2019, from Samantha Thomas to
19 Mr. Andersson, and the attachment, which is a
20 reservation of rights letter, so it ends up being a
21 three-page document. It has the Bates number CF000055
22 through 57.

23 (Exhibit 27 marked for identification.)

24

1 BY MS. NIEMEYER:

2 Q. Mr. Ball, I know you're not included in this
3 e-mail chain, but I wanted to ask whether you were
4 ever asked to provide any kind of an input in the --
5 in the drafting or in editing or reviewing or
6 providing any feedback related to this December 27th,
7 2019, reservation of rights letter?

8 A. No. Again, beyond -- beyond our report and
9 the documents you've already gone through, I'm not
10 aware of anything additional with this.

11 Q. I just exed out of it, but I'm going to ask
12 you, before I call it a document we're not looking at;
13 other than the listing of what kind of GPS equipment
14 was on the vessel, that kind of thing, was there
15 anything on the prepurchase survey that you considered
16 important to your report or something that you think
17 that we should know about?

18 A. (Deponent viewing document.) Obviously, I
19 didn't when I wrote the report. I haven't -- I
20 haven't gone through it again. I obviously would've
21 done when I did the report. I'm happy to review it
22 again and -- and offer another opinion. But,
23 obviously, when I wrote the report, I didn't think
24 there was anything too exciting there looking at his

1 own report.

2 Q. Is it fair to say that -- that -- and -- and
3 I think your answer just told me what I need to know.
4 Is it fair to say that -- and that prepurchased survey
5 was -- was, just for the record, that was Exhibit 12
6 in Mr. Usher's deposition.

7 Is it fair to say that the prepurchase
8 survey, then, was not something that you relied upon
9 heavily or that there's any facts in it that were
10 determinative of what you gave as your opinion?

11 A. Yes. That's absolutely correct.

12 Q. Okay. Okay. Let me just see -- we have --
13 okay. One more document. Hold on.

14 (Pause.)

15 BY MS. NIEMEYER:

16 Q. I'm going to show you a document that's been
17 marked in Mr. Usher's deposition already as
18 Exhibit 14. It's a 59-page compilation of e-mails and
19 photographs, and it starts with CF000075. As you can
20 see, this was sent by Mr. Andersson to Sarah
21 Delacey-Simms and Ms. Thomas and is dated January 6th
22 of 2020. Mr. Ball, I'll represent, this was not
23 produced as an AB document coming from your office.

24 But do you have any recollection of seeing

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1 e-mails that looked like this, that may have been
2 forwarded to you?

3 A. (Deponent viewing exhibit.) No.

4 Q. They were essentially --

5 A. So far it --

6 Q. -- collections of photographs.

7 MADAM COURT REPORTER: I'm sorry,
8 I didn't hear what you said, sir. I didn't hear after
9 you said --

10 A. No, I -- I had said that so far -- I had said
11 that so far, it was blank e-mails. We've gotten
12 through two blank pages at that point.

13 Q. Okay. Yeah, it's the cover and then
14 attachments.

15 So, on the January 6th, 2020, the first
16 grouping here, this is where I learned about the
17 stove, which you can see there's a photograph, and it
18 says here, it's got a picture, "New Force 10 stove
19 with gas bottle - stolen onboard while 'security'
20 present!" So there was a photo of it still in the
21 boat and it appears to just be there in a document
22 that it existed.

23 So you don't recall seeing this?

24 A. (Deponent viewing exhibit.) No, not at all.

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1 Q. Okay. And -- and you said by January 6th,
2 other than being asked to give that -- that response
3 on -- that you gave, dated January 31st, you really
4 didn't do any other work, correct, on this claim?

5 A. I believe that's correct, yes.

6 MS. NIEMEYER: Okay. Let's take a short
7 break, about five minutes. I just want to go through
8 my notes. I believe we're done or very close to it.

9 THE DEPONENT: Sure.

10 (Off the record at 5:29 p.m.)

11 (Recess taken.)

12 (Back on the record at 5:33 p.m.)

13 MS. NIEMEYER: I've just got a couple of
14 little questions, nothing major.

15 BY MS. NIEMEYER:

16 Q. So one of the questions I have is whether --
17 to your knowledge, were there any photographs taken
18 that you did not produce; as in, I know you didn't do
19 the production that came to me, but were there any
20 photographs that you remember that you didn't see in
21 what we showed you today?

22 A. No. You --

23 Q. And --

24 A. -- you showed me some that I hadn't seen

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303

1 before, if that's what you're asking. But I'm not
2 aware of any photographs that you haven't shown me
3 today.

4 Q. Okay. Other than your handwritten notes that
5 you showed us that ultimately led to that written
6 statement, are there any other handwritten notes that
7 you took in the course of the work that you did that
8 we don't have?

9 A. No.

10 Q. And we don't have any.

11 A. (Deponent nods head.)

12 Q. So are there any other handwritten notes?

13 A. I've got -- I've got what's left of the file
14 that's not spread across my desk here (indicating),
15 and that's the only handwritten note in there.

16 Q. And so is that one note from the -- from the
17 meeting?

18 A. (Deponent nods head.)

19 Q. Is that the only note?

20 A. Correct.

21 Q. How many pages --

22 A. It's the only handwritten note.

23 Q. -- long is that? How many pages is that?

24 A. (Deponent viewing document.) It is -- it's

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304

1 one. It might be one double-sided. Let me see where
2 I put it. Sorry. I've spread this file all over my
3 desk today, so...

4 (Deponent viewing document.) Yes, it's a
5 single -- single page (indicating).

6 MS. NIEMEYER: Okay. Michael, we'd like
7 a copy of that, please.

8 MR. GOLDMAN: (Inaudible.)

9 MADAM COURT REPORTER: Michael? If
10 you're talking, Michael, you're on mute.

11 MR. GOLDMAN: Oh, of course. Andrew,
12 send it to me, and I'll forward it to them.

13 MS. NIEMEYER: Okay. Thank you.

14 THE DEPONENT: Yes, I will do that. I'll
15 send it immediately following this -- this call.

16 BY MS. NIEMEYER:

17 Q. Mr. Ball, are you still doing work with Great
18 Lakes?

19 A. Well, I mean, I believe so. We haven't had
20 any claims in a while. Due to -- due to COVID,
21 there's -- there's not a whole lot of claim activity
22 in the Caribbean now. But I have no reason to believe
23 that Great Lakes has discontinued using our services.

24 Q. Okay. This is a ludicrous comparison, but

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305

1 apparently, like the flu, marine losses have gone down

2 because of COVID. A happy by-product, I guess.

3 Less travel, less tourists, less crashes,

4 right?

5 A. It would be a great year to be in marine

6 insurance, that's for sure.

7 Q. Yup. Not a great year to be somebody who

8 owns a fleet of boats, though.

9 So --

10 A. Well --

11 Q. -- to your knowledge --

12 A. -- I represent --

13 Q. -- is -- and -- so, in your work that you're

14 doing in Tortola, that's part of what you're doing,

15 right, is representing that industry?

16 A. Yeah. I -- I am effectively the spokesperson

17 for the industry here.

18 Q. Wow.

19 A. It's -- it's been an interesting year. I

20 used to have more hair (indicating).

21 Q. Yeah. It -- my heart goes out to them.

22 To your knowledge, as we sit here today, is

23 Sarah Delacey-Simms still an complete of Concept?

24 A. As far as I'm aware.

↑

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1 Q. Okay. And the only other thing --

2 A. I think so.

3 Q. -- I just wanted to clarify -- there's two
4 things, actually. One of them is, we talked about
5 communications between you and Concept.

6 A. (Deponent nods head.)

7 Q. And we talked about your communications with
8 Mr. Andersson and I think --

9 A. (Deponent nods head.)

10 Q. -- we talked about your -- your traditional
11 way of communicating with Mr. Bailey tended to be on
12 the phone; is that correct?

13 A. That's correct. On -- on the phone and in
14 the office, you know, we're -- we're -- we talk to
15 each other probably five, six, seven times a day if
16 we're not sitting in the same room, in which case,
17 it's more. So there's a --

18 Q. The reas --

19 A. -- there's, sort of, a constant line open
20 there.

21 Q. -- the reason I ask is because there really
22 weren't e-mails between you and Mr. Bailey in the

23 things that you produced.

24 Is that just kind of how do you business;

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307

1 you're just not sending a lot of e-mails between each
2 other?

3 A. That's correct. If I look at where I'm
4 sitting right now, his -- his desk is less than 20
5 feet away from me. And, obviously, when -- when I'm
6 overseas dealing with a claim, I -- I likely don't
7 have connectivity in the field. And by the time I do
8 have connectivity, we want to communicate fast. I
9 want to give him the opportunity to ask questions and
10 guide any way he needs to. So, verbally, is the --
11 the easiest way to do that, obviously.

12 Q. One more question.

13 A. Sure.

14 Q. As the captain of a sailing catamaran, if you
15 have someone who's quite seasick, and you have a
16 choice between changing direction and attempting to
17 help that person feel better by the attitude of the
18 vessel in relation to the waves and the wind or going
19 into port in Venezuela, which would you choose?

20 A. That's really a measure of how seasick this
21 person is. Again, if -- if I believe that they are in

22 -- in real serious danger, then, you know, you have to
23 weigh your risk.

24 You know, it -- there would definitely be a

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1 point at which I would say, this is getting too bad, I
2 have to go to my closest safe port. Although, I think
3 that Venezuela's a particularly safe port, but it's
4 safer than the alternative. That's a pretty dire
5 situation, and I'm not under the impression that we
6 got to this stage in terms of -- in terms of what was
7 happening on board Melody.

8 For somebody to be that seasick, you really
9 have to be at sea for, you know, a -- a good four or
10 five days. However, you know, the -- there is a -- a
11 benefit to turning back for the person's comfort,
12 obviously, but not for the person's safety.

13 Does that, sort of, make sense?

14 Q. Sort of, yes.

15 A. An example I would give -- an example I would
16 give was, when I was in the UK, I ended up running a
17 boat where we had yachtmaster students that were doing
18 their sea time. So we spoke a little bit about how
19 you have to spend time at sea in order to get your
20 license, so you have to log a certain number of miles
21 off shore, skippered passengers, night hours,

22 et cetera.

23 And so one of the courses we used to do is
24 from the south coast of the UK, at the Isle of Wight,

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1 up to Ireland, to Dún Laoghaire. And that was, you
2 know, really nasty, cold, wet, tired stuff, but it
3 built a good sailor.

4 And we had a guy that got so sick as soon as
5 we had left the Isle of Wight on the south coast of
6 England that, you know, we -- we knew he wasn't going
7 to be in good shape. He was bedridden for the entire
8 trip.

9 When we got to Dún Laoghaire, we actually
10 turned around and said, you're going to have to go
11 away and get a doctor to you clear you to come back
12 with us. You know, at that point, he had some blood
13 in his vomit. You know, he was -- he was in pretty
14 bad shape, and that would've probably been five or six
15 days out there.

16 He did, in fact, get a doctor to clear him.
17 When we left Dún Laoghaire again, to head back to the
18 Isle of Wight, he became sick again, and we did change
19 our course. We put into Holyhead in Wales, which is a
20 lot further north on the -- on the west coast of

21 England, and put him off the boat. We sent him to
22 hospital and said, find your own -- find your own way
23 home, but we can't have you on the boat.

24 So there -- there is definitely a time and a

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1 place for changing course and putting crew off the
2 boat.

3 Do I believe that, in terms of sea sickness,
4 you can get there in three days, in relation to the
5 person's safety? No. But in terms of -- of
6 maintaining a watch, I still believe that the -- the
7 prudent thing to do would have been to turn to the
8 closest, safe, and obviously, accessible port. So
9 that would not include -- that would -- I -- my -- my
10 risk analysis would not include going to Venezuela.

11 MS. NIEMEYER: Thank you. I appreciate
12 that. And -- and I'm done, with that answer.

13 MR. GOLDMAN: Okay. I have nothing.

14 MADAM COURT REPORTER: This is Laurie
15 Berg, the court reporter. I'm just going to do orders
16 on the record, and then I have some spelling questions
17 for Mr. Ball.

18 I'll just ask if the attorneys want the same
19 orders that they had at the last deposition, if the
20 ten-business-day turnaround time, which is the regular

21 turnaround time, is okay, and if you need anything
22 special like a rough, you can let me know.

23 And can we please start with Michelle?

24 MS. NIEMEYER: As far as I know, it's

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1 fine.

2 MADAM COURT REPORTER: Okay.

3 MS. NIEMEYER: If it changes, Laurie,
4 I'll let you know.

5 MADAM COURT REPORTER: You got it. Okay.

6 MR. GOLDMAN: Ten days is fine for us.

7 (DEPOSITION OF ANDREW BALL concluded at
8 5:43 p.m.)

9 (Exhibit 26A, Andersson_CF000144 to
10 Andersson_CF000148, was marked during the deposition
11 as Exhibit 26 and, by agreement of the parties, was
12 changed to Exhibit 26A after the conclusion of the
13 deposition proceeding.)

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1 COMMONWEALTH OF MASSACHUSETTS

2 MIDDLESEX, SS.

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4 I, Laurie J. Berg, Certified Court Reporter,

5 Registered Professional Reporter, Certified Realtime

6 Reporter, Certified LiveNote Reporter, Certified

7 eDepoze Reporter and Notary Public, in and for the

8 Commonwealth of Massachusetts, do hereby certify that

9 pursuant to appropriate notice of taking deposition,

10 there remotely appeared before me the following named

11 person, to wit: ANDREW BALL, who was by me duly

12 sworn; that he was thereupon examined upon his oath

13 and his examination reduced to writing by me; and that

14 the deposition is a true record of the testimony given

15 by the witness.

16 IN WITNESS WHEREOF, I have hereunto set my

17 hand and seal this 12th day of June, 2021.

18

19 My commission expires:

20 September 14, 2023

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Notary Public

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1 ERRATA SHEET DISTRIBUTION INFORMATION

2 DEPONENT'S ERRATA AND SIGNATURE INFORMATION

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4 ERRATA SHEET DISTRIBUTION INFORMATION

5 The original of the errata sheet has been

6 delivered to Michael I. Goldman, Esquire.

7 When the errata sheet has been completed by

8 the deponent and signed, a copy thereof should be

9 delivered to each party of record and the ORIGINAL

10 delivered to Michelle Melin Niemeyer, Esquire, to whom

11 the original deposition transcript was delivered.

12

13 INSTRUCTIONS TO DEPONENT:

14 After reading this volume of your deposition,

15 indicate any corrections changes to your testimony

16 and the reasons therefor on the errata sheet supplied

17 to you and sign it. DO NOT make marks notations on

18 the transcript volume itself. Add additional sheets

19 if necessary. Please refer to the above instructions
20 for errata sheet distribution information.

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1 PLEASE ATTACH TO THE DEPOSITION OF ANDREW BALL

2 CASE: Great Lakes Insurance SE

3 V. Martin Andersson

4 DATE TAKEN: June 2, 2021

5

6 ERRATA SHEET

7 Please refer to Page 313 for errata sheet instructions

8 and distribution instructions.

9 PAGE LINE CHANGE/REASON

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 I have read the foregoing transcript of my deposition

18 and except for any corrections changes noted above, I

19 hereby subscribe to the transcript as an accurate

20 record of the statements made by me.

21 Executed this ____ day of _____, 2021.

22

23

24

ANDREW BALL

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